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Supreme Court, U.S.
FILED

08-799 NOV 20 2008

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No. _____

In The
SUPREME COURT OF THE UNITED STATES

RICHARD JOHN FLORANCE, JR.,
Defendant – Appellant – Petitioner – Petitioner,

v.

STATE OF TEXAS,
Plaintiff – Appellee – Respondent – Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS
OF TEXAS

ORIGINAL PETITION FOR A WRIT OF CERTIORARI

RICHARD JOHN FLORANCE, JR.
1908 VASSAR DRIVE
RICHARDSON, TEXAS, 75081

Questions Presented

Collateral Order Doctrine

Threshold Application

1. Is the collateral order doctrine part of Due Process applicable to the states via the 14th Amendment?

2. Does the trial court have jurisdiction during the pendency of a collateral order doctrine appeal?

Statutory Challenges

3. Does TEX. CIV. PRAC. & REM. CODE § 51.014 violate Due Process?

4. Does TEX. R. APP. P. 25.2(a)(2) violate Due Process?

5. Does TEX. R. APP. P. 25.2(d) violate Due Process?

Procedure for Collateral Order Doctrine appeals

6. Has RJF been denied access to the appellate court(s)?

Collateral Orders at Issue

7. May a defendant be compelled to trial on an incomplete Record?

8. May a defendant who wants to waive representation be compelled into particular waiver language?

9. May a defendant be compelled to trial without clarification as to which Information is active?

10. May a ***disqualified*** judge commandeer the habeas petition?

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Petition for a Writ of Certiorari

Florance ("RJF") petitions for a writ of certiorari to the Court of Criminal Appeals ("CCA") as follows:

Citations to decisions below

None.

Jurisdiction

(i) Date Order Was Entered
29 October 2008 [+90: 27 Jan 2009].
CCA "refused" the petition.

(ii) Extension N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. §§ 1257(a), 2101(c).

(v) Statutory challenge, Rule 29.4(c)
STATE is a party. No certification of any issue to STATE's Attorney General.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Statement of the Case

When Federal Questions Were Raised

RJF filed a collateral order doctrine appeal.

Actually, there are three Notices of Appeal asserting the collateral order doctrine, four if we

include the one regarding habeas. *See* Questions 7-10. The appellate court has ruled on only the first one. *See* Question 7.

THE PROBLEMS WITH THE RECORD.

Upon mandate of the original appeal, County Court No. 2 issued a Notice to Appear. That day, and prior to that setting, RJF filed his special appearance and motion to dismiss along with his formal notice of his declining to plea. At the hearing, the judge self-recused. During the first appearance in the transferee court, RJF quickly developed grave concerns as to whether the recently filed documents, as well as the prior two years of Record, had made the transfer to County Court No. 3. In particular, the transferee court did not set the motion for a hearing and in fact did not respond in any way to the filing of the motion and the fiat, raising the question of whether the motion was even in the Record. That compelled the filing of the emergency collateral order doctrine appeal. There's only one time to fix the Record: pre-trial.

Then another problem arose. RJF filed his pre-trial habeas application with the clerk, naming both County Courts Nos. 2 and 3 as Respondents. The application was served (FedEx'd) 5 June (Thurs.) but wasn't filed until 9 June (Mon.). Then, BARRY, d/b/a Court No. 3, *sua sponte*, and secretly, ordered the clerk to file the habeas in the case file for the underlying case, No. 002-81238-06 (this case), as if it were a mere pre-trial motion. The "secret" part changed, in part, after RJF made further inquiry on 24 June. *See* App. A. pp. A-75 to A-79. There is a written order of that same date. However, the court has never served a copy of that order on RJF. RJF

had constantly to check the Record in order to have any idea of what, if any, rulings existed. Upon that inspection, RJF found that BARRY had not only assigned the habeas to himself but also had buried it in the underlying case. BARRY very clearly had zero intention of addressing it ***pre-trial*** whatsoever.

Therefore, RJF raised the "hue and cry" via the collateral order doctrine appeal regarding the habeas. Somehow, BARRY managed to set both the motion to dismiss and the habeas for a hearing.

Then, more problems arose. On 7 July, on hearing, BARRY entered the rulings in open court denying both the motion and the habeas. However, the fill-in reporter was too swamped to prepare the Transcript, and BARRY locked up the Record in his office until trial, which started 16 July. Thus, during that last 9-10 days before trial RJF had no access to the Record. The clerks had no access, either. Thus, for RJF to pursue habeas ***pre-trial***, he had to file his application with the CCA without any order. BARRY allegedly signed that order 7 July. Whenever it was signed or filed, the court never served RJF with a copy of *that* order, either. Once that order was accessible, 22 July, RJF moved to supplement the Record both in the CCA and in the appellate court.

THE COMPELLED CONSENT PROBLEM.

RJF waived representation. During the colloquy with the court, RJF objected to the language of Art. 1.051(g), and he submitted a statement he *would* sign. BARRY compelled RJF to agree to the legislatively proposed language in Art 1.051(g). There *are* potential, additional waivers included in that compelled language, and the only time to fix that issue is pre-trial.

THE "MULTIPLE INFORMATION" PROBLEM.

The appellate ruling reversing the transferor court's dismissal focused on the statutory analysis. Included in the transferor court's initial ruling is the order granting STATE's motion to amend the Information. Where the whole order is reversed, and yet no mention is made of the Information, the question remains as to which Information is active, the original or the amended. The only panel with authority to clarify that issue is the one that entered the ruling to be clarified. The technical answer, that the amended Information has been rendered inactive, may or may not be what the appellate panel intended. Either way, there's only one meaningful time to have the point clarified, namely pre-trial.

THE COMMANDEERED, COMMINGLED, AND IGNORED HABEAS PROBLEM.

Habeas is a separate, civil proceeding, and BARRY, a "restrainor", is a party to that proceeding. Nonetheless, BARRY commandeered that application, ordering it commingled with the underlying criminal case. BARRY then buried it, deliberately ignoring it, until RJF raised the "hue and cry" via the collateral order doctrine appeal of the habeas, which exposed the shenanigans. Then, even though ***disqualified***, BARRY ruled on it.

BARRY never caused the order to be served on RJF, fully intending to deny access to the appellate court(s) to forestall any ***pre-trial*** habeas.

BARRY moved forward with trial, anyway.

RJF filed three motions for contempt due to BARRY's having continued to exercise jurisdiction despite ***four*** collateral order doctrine appeals.

Additional problems.

The state appellate court required a "certificate of appealability" regarding the collateral order doctrine appeals. RJF responded by moving to strike TEX. RS. APP. P. 25.2(a)(2) and 25.2(d). Denied, of course.

Rule 25.2(a)(2) purports to allow the trial court to control a party's access to the appellate court via granting or withholding "certification". This tends to obliterate the collateral order doctrine.

Rule 25.2(d) purports to justify punishing the *defendant* for the trial and/or appellate court's errors/refusals regarding such certificates. If the *defendant* is going to be punished, let it be for something over which the *defendant* ***has*** control. Moreover, this purports not only to give the trial court authority to deny a party's access to the appellate court, which is bad enough, but also to nullify the purpose of the collateral order doctrine.

Also, CIV. PRAC. & REM. CODE § 51.014 in no way recognizes the collateral order doctrine, thereby denying access to all who would assert that doctrine.

Argument

Collateral Order Doctrine

Threshold Application

1. **Is the collateral order doctrine part of Due Process applicable to the states via the 14th Amendment?**

Texas doesn't recognize the collateral order doctrine.

The Permian Corporation.

But see TEX. RS. APP. P. 29.5, 29.6.

Is the doctrine merely federal procedure or is it part of Due Process?

Cohen, 337 U.S. at 547; *Cox Broadcasting*; *Coopers & Lybrand*, 437 U.S. at 468; *Moses H. Cone Hospital*; *Ritchie*.

Obviously, if it's merely procedural, then Texas has discretion not to recognize it, and the state appellate court doesn't have jurisdiction. However, if it's part of Due Process, then the state appellate court *does* have jurisdiction.

The appellate court focuses on the transfer order. The problem arises in combination with that and the Scheduling Order. Either way, "jurisdiction or not" is adequately addressed.

No state court may take jurisdiction over a federal issue and then strip that federal issue of its federal protection. Due Process isn't merely "federal procedure"; it's structural and foundational. Due Process supercedes all state constitutions, judicial opinions, statutes, and procedural rules.

2. Does the trial court have jurisdiction during the pendency of a collateral order doctrine appeal?

What process is due? The trial court traditionally has no authority during the pendency of an appeal. *Cf. Dyches*; *Woodson*; *Griggs*, 459 U.S. at 58. BARRY never stoppped. RJF filed three motions for contempt; two regarding pre-trial activity and one regarding trial. All were denied. RJF was told to stop filing contempt motions; hence, there is no motion for contempt addressing BARRY's post-judgment activity.

Statutory Challenges

3. Does TEX. CIV. PRAC. & REM. CODE § 51.014 violate Due Process?

Since this language doesn't recognize the collateral order doctrine, it unlawfully denies access to the state appellate courts.

4. Does TEX. R. APP. P. 25.2(a)(2) violate Due Process?

This Rule puts into the hands of the trial court full and complete control over a party's access to the appellate court. It facially conflicts with Art. 44.07, which formally recognizes the right of appeal. STATE can't recognize a right substantively and then turn right around and deny it procedurally. *Cf. Crawford* (evidentiary privilege can't be reneged). Key, STATE can't create a procedure that defies fundamental Due Process, and this trial-court-controlled access mechanism via "certification" completely demolishes the collateral order doctrine.

5. Does TEX. R. APP. P. 25.2(d) violate Due Process?

Per this Rule, the appellate court may punish the *defendant*, by dismissing the appeal, where there's no "certification". On the face of the matter, punishing the *defendant* for something that is completely beyond *his* control is ***outrageous***. Where the plea legitimately limits the appeal, the defendant may be burdened to show how his appeal fits within the

scope of the plea entered. Denying access to the appellate court is not even remotely a competent solution to anything, and it's egregiously repugnant to everything except tyranny.

Procedure for Collateral Order Doctrine appeals

6. Has RJF been denied access to the appellate court(s)?

Since the collateral order doctrine appeal was dismissed for lack of jurisdiction, access was denied.

Also, the state appellate court entered its ruling before obtaining the Record and the relevant Transcripts. [1] It's a denial of access for the appellate court to enter a ruling without having a Record. Moreover, how in the world does the CCA (or the state supreme court) review the appellate court's ruling where there is no Record? Thus, denial of access applies all the way up the line.

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[1] In another case, on appeal as No. 05-08-01301-CR, City of Dallas issued RJF a ticket for not having the "window sticker" on the window, even though the fee had been paid, as plainly and clearly displayed on the ticketing officer's patrol car's computer screen. When times are busy, irregular tasks can simply be forgotten. Motion to dismiss for violation of Art. 45.018(b) denied. Motion to dismiss for incompetent "complaint" (no statute) denied. RJF initiated a collateral order doctrine appeal to the *county* court, which has gone silent to this very day; pre-trial habeas, same silence. The appellate court opened a case based upon the complimentary copy of the Notice of Appeal sent there. They again entered a ruling before obtaining any Record. Because they had no Record, they also made material misstatements of material fact. Thus, entering premature rulings for collateral order doctrine appeals has already become habit, with dangerous consequences.

Collateral Orders at Issue

7. May a defendant be compelled to trial on an incomplete Record?

Some people may want a corrupted Record. RJF doesn't. Where the defendant demands a complete Record and isn't getting that, all activity should stop until that problem is fixed. Under absolutely no circumstance should a defendant ***ever*** be compelled to proceed to trial where the Record is corrupted.

Transferred Records, even within the same Clerk's Office, should be verified as to content going out and verified going in, with signatures on both ends of the transfer. It's a "chain of custody" issue.

8. May a defendant who wants to waive representation be compelled into particular waiver language?

A-12 to A-27, and A-59 to A-62. *Rudzewicz*, 471 U.S. at 486; *Ohralik* (limiting "in person" solicitation; thus, limiting duress, coercion, and undue influence engaged in by the legal profession); *Bates* (regarding "by mail" solicitation and other forms of legal services advertising); *Ceballos* (professional ethics still matter); *Gonzalez*; *Miranda*; *Escobedo*.

9. May a defendant be compelled to trial without clarification as to which Information is active?

There are two Informations: the original and the amended. For the relevant orders, see App. B.

We can determine a technical answer. What's

overruled is overruled.

But, it's inconsistent for the appellate court to uphold the statute and turn right around and strike the amended Information. So, we still don't really know the appellate court's intent, and there's really only one time to determine it: pre-trial.

10. May a *disqualified* judge commandeer the habeas petition?

No "restrainor" may rule on his own "restraint"

Hidden in the "ex parte" case styles in the CCA habeas cases is the undeniable fact that one of the "restrainors" is the judge ordering the party restrained. That makes the judge over the *trial* matter (A) a witness in, ***and*** (B) someone with an interest in the subject matter of, the ***habeas*** case.

The judge who is a witness is ***disqualified*** to preside over that same matter. *Bradley*, 990 S.W.2d at 248, 249 ("[A] judge testifying as a witness violates due process rights ***by creating a constitutionally intolerable appearance of partiality***.") (emphasis added) (citing TEX. R. CIV. EVID. 605; *Brown*, 843 F.2d at 851; *In Re Murchison*). ***Disqualification*** is distinguished from (mere) *recusal*. *See* TEX. R. CIV. P. 18a, 18b; *Tesco American, Inc.*, 221 S.W.3d at 551-52 n.1, 553 n.10, 555 n.27. *Bradley*, 990 S.W.2d at 249. Manifest, and key, where the ***very issue*** is the legality of the "restraint", the "restrainor" judge "has an interest in the subject matter in controversy." *Cf.* TEX. R. CIV. P. 18b(1)(b); *McKenna*. [2]

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[2] Not relevant here is RJF's objection to Arts. 11.07 and 11.071, which compel the "restrained" felony/death penalty party to seek habeas in the "convicting court". Since there's a

RJF realizes that BARRY is likely acting out of tradition and habit, but the petition ***very*** clearly identifies both Court No. 2 and Court No. 3 as defendants. The case number is blank, and the court number is blank. It was not presented that way out of uncertainty. [3] The commandeering of, and delay in acting on, ***that*** petition does more than merely damage judicial credibility. There's intentional denial of access, regarding a particular witness, as well as a couple of years of history to which BARRY very deliberately joined himself, the avoiding of which was a huge motivator for filing ***that*** petition. [4]

Remedies and Relief Requested

Given the foregoing, RJF requests relief and remedies as follows:

1. Grant this petition, issue the writ of certiorari,

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one-to-one relationship between "court" and "judge", the Rules create/compel nothing but void habeas judgments.

[3] As shown in the cover letter, A-75, RJF *knows* the case number(s) for the underlying case. He also knows the case style!

[4] In the underlying case, STATE has retaliated against RJF, charging him criminally under Tex. Penal Code § 32.49, for exercising his right of redress. RJF asserted his claim arising from the Collin County Clerk's criminal Record-tampering in what became No. 06-777, by filing a "Notice of Lien". Relying on § 32.49, the Collin County DA's Office has turned the mere *existence* of an un-litigated commercial matter into a ***criminal*** offense. Because TAYLOR, the Record-tampering clerk, ***alleges***, and swears under oath, that per her uninformed legal opinion she doesn't owe RJF anything, RJF is looking at six months in jail. This case was never about RJF but rather some outfit called ✱ **Republic of Texas** ✱, whatever that is. The civil counterpart is addressed in No. 07-171.

and take jurisdiction of this matter;

2. Reverse or vacate the present appellate ruling and remand for consideration of all the collateral order doctrine appeal issues, thereby overruling *The Permian Corporation*;
3. Declare CIV. PRAC. & REM. § 51.014 void;
4. Declare TEX. R. APP. P. 25.2(a)(2) void;
5. Declare TEX. R. APP. P. 25.2(d) void;
6. Declare that the appellate court must have a Record before issuing a ruling;
7. Thereby also declaring the jurisdictional concept that the trial court has no jurisdiction, save a limited-duration plenary jurisdiction, to move forward to, much less through, trial during the pendency of a collateral order doctrine appeal;
8. Grant any motions related to this case that RJF may need to file;
9. Allow RJF to brief any additional issues the Court may identify;
10. The non-argument calendar;
11. Costs; and
12. Any and all other relief at law, in equity, or sui generis to which he may show himself justly entitled.

Respectfully submitted,

/s/ Richard John Florance, Jr.
Richard John Florance, Jr.

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Appendix A—This case, Round 2

Rule 14.1(i)(i)—Appellate Opinion and Judgment

2008 Oct 29 – CCA refuses petition

[Watermark SEAL of THE STATE OF TEXAS]

OFFICIAL NOTICE FROM
COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION,
AUSTIN, TEXAS 78711

Wednesday, October 29, 2008
RE: Case No. PD-0878-08
COA#: 05-08-00724-CR
STYLE: FLORANCE, RICHARD JOHN, JR.

On this day, Appellant's Pro Se petition for discretionary review has been refused.

Louise Pearson, Clerk

RICHARD JOHN FLORANCE JR.
1908 VASSAR DRIVE
RICHARDSON TX 75081

[Pitney Bowes meter mark:
02 1A $ 00.27⁰
0004623940 OC T 29 2008
MAILED FROM ZIP CODE 78701]

2008 Jun 17—Appellate Opinion

DISMISS; Opinion issued June 17, 2008

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-08-00724-CR

RICHARD JOHN FLORANCE, JR., Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 3
Collin County, Texas
Trial Court Cause No. 002-81238-06

MEMORANDUM OPINION

Before Justices Morris, Whittington, and O'Neill

In this case, Richard John Florance, Jr. filed a notice of appeal from the trial court's order transferring the case from one court to another after the original trial judge recused himself. Appellant asserts the order "apparently strikes the entirety of the [r]ecord in this case, about two years' worth of work, on the sole basis that there's a different judge to preside over the trial."

As a general rule, an appellate court may consider appeals by criminal defendants only after conviction.

Wright v, State, 969 S.W.2d 588, 589 (Tex. App. - Dallas 1998, no pet.). Intermediate appellate courts have no jurisdiction to review interlocutory orders absent express authority. *Ex parte Apolinar*, 820 S.W.2d 792, 794 (Tex. Crim. App. 1991), *Wright*, 969 S.W.2d at 589. An order transferring a case from one trial court to another following the recusal of a judge is neither a [⊥ 2] judgment of conviction nor an otherwise appealable interlocutory order. *See Wright*, 909 S.W.2d at 589 (setting out types of appealable interlocutory orders). Absent a judgment of conviction or other appealable order, we have no jurisdiction over the appeal.

We dismiss the appeal for want of jurisdiction.

PER CURIAM

Do Not Publish
TEX. R. APP. P. 47
080724F.U05

2008 Jun 17—Judgment

(Seal of THE STATE OF TEXAS)

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

RICHARD JOHN FLORANCE, JR., Appellant	Appeal from the County Court at Law No. 3 of Collin County, Texas. (Tr.Ct.No. 002-81238-06). Opinion delivered per curiam before Justices Morris, Whittington, and O'Neill.
NO. 05-08-00724-CR V.	
THE STATE OF TEXAS, Appellee	

Based on the Court's opinion of this date, we **DISMISS** the appeal for want of jurisdiction.

Judgment entered June 17, 2008.

/s/ Joseph B. Morris
JOSEPH B. MORRIS
JUSTICE

Rule 14.1(i)(ii)—Additional Orders

Transferor Court

2008 Apr 23—Post-mandate Notice to Appear

NOTICE TO APPEAR

Cause number 002-81238-06
The State of Texas Vs. FLORANCE,RICHARD JOHN JR

In The County Court at Law #2 of Collin County, Tx

You, the defendant, are hereby ordered to appear before The Honorable Jerry Lewis, County Court at Law #2, 1800 N. Graves, University Drive Courts , McKinney, Texas, 75069, on the 16 **day of May A.D. 2008, at 9:00 o'clock A.M.**, to answer criminal charges pending in that Court, to wit:

Refuse Execute Release Fraudulent Lien/Claim

and there remain until discharged by that Court.

Witness my official signature at McKinney, Texas this 23rd day of April A.D. 2008.

STACEY KEMP, County Clerk
Collin County, Texas
By: */s/ Amy Cundiff*
Deputy Clerk

Your failure to respond to this notice will result in a warrant for your arrest being issued.

CERTAIN DRIVING-WHILE-INTOXICATED CASES

A person charged with driving-while-intoxicated who also intends to plead Guilty or Nolo Contendere or who has been found guilty at trial may also be required to take the Drivers-Risk-Inventory test. The test is given at the University Drive Courts Facility, 1800 North Graves, McKinney, Texas 75069 between 8:00 a.m., and 5:00 p.m.Monday [sic] through Friday. The $30.00 fee for taking the exam most be paid by cashier check or money-order at the time the test is taken. Please make checks or money orders payable to Collin County CSCD.

It is possible to take the test before ones court date, and doing so may save time

PAYING COURT-COSTS WHEN IT BECOMES REQUIRED IN ANY CASE

The following information about court-costs is provided to assist one seeking information for use when making a court-appearance.If [sic] a person has been found Guilty of a criminal offense after a trial, court-costs are due immediately. Court-costs are also immediately doe when any person appears and pleads Guilty or Nolo Contendere. Court-costs may be as high as $500.00. Persons intending to plead Guilty or Nolo Contendere may save considerable time by bringing funds with which to pay court-costs.

It is an offense for a person to intentionally influence or coerce a witness to testify falsely or to elude legal process. It is also a felony offense to harm or threaten to harm a witness or prospective witness in retaliation for or on

account of the service of the person as a witness or to prevent or delay the persons service us a witness to a crime. [emphasis added]

[Spanish omitted]

Mailed to:
FLORANCE,RICHARD JOHN JR
1908 VASSAR DRIVE
RICHARDSON, TX 75081
ntc0v2.doc

2008 May 16—Trial Court's Self-Recusal (i.e., the transfer order)

2-81238-06
Cause No.

THE STATE OF TEXAS	IN THE COUNTY COURT
(Seal of)	AT LAW NO. 2 OF
vs.	COLLIN COUNTY,
(COLLIN COUNTY)	TEXAS
RICHARD JOHN FLORANCE, JR.	HON. JERRY LEWIS, PRESIDING

ORDER OF VOLUNTARY RECUSSAL

On this date the defendant and an attorney for the state appeared in court for the first time' following a mandate from the Court of Appeals ordering that the case be returned to the trial court's

docket and tried as charged by the Information.

Previously, the defendant filed a motion for dismissal and other matters. Prior to the hearing the presiding judge read the defendant's brief on his motion. Upon doing so, the judge determined he cannot be a fair and impartial judge in this particular case based on the nature and wording of the law underlying the offense.

Therefore, on his own motion, the judge voluntarily recuses himself and refers the case to the Local Administrative Judge for County Courts at Law for re-assignment. To even docket load, this judge will accept transfer [of] any case on the receiving court's trial docket in return per that judge's choice.

A copy of this order was delivered to the defendant and the state's attorney in open court.

Date signed: May 16, 2008

/s/ Jerry Lewis
JERRY LEWIS

RECEIVED MAY 16, 2008:

/s/ Richard John Florance, Jr.
Defendant

/s/ Kelley Sullivan
Criminal Assistant District Attorney

Transferee Court

2008 May 16—Post-transfer Notice to Appear

NOTICE TO APPEAR

Cause number
002-81238-06

In The County Court
at Law #3

The State of Texas Vs.
FLORANCE,RICHARD JOHN JR

of Collin County, Tx

Effective May 1, 2001, all defendants are required to be present in court for all settings.

You, the defendant, are hereby ordered to appear before The Honorable John O. Barry,County [sic] Court at Law #3, 1800 N. Graves, University Drive Courts, McKinney, Texas, 75069, on the 22nd day of May A.D. 2008, at 8:30 o'clock A.M., to answer criminal charges pending in that Court, to wit:

Refuse Execute Release Fraudulent Lien/Claim

and there remain until discharged by that Court.

Witness my official signature at McKinney, Texas this 16 day of May A.D. 2008.

STACEY KEMP, County Clerk
Collin County, Texas
By: _____
Deputy Clerk

It is a criminal offense to fail to appear in Court upon receipt of this notice or **to influence or coerce a witness to elude legal process, or to harm or**

to threaten to harm a prospective witness, or to prevent or delay anyone[']s service as a witness. [emphasis added]

[Spanish omitted]

You have the right to be represented by an attorney or represent yourself.

You may not reschedule a case by phone.

Come to court dressed appropriately. Shorts, revealing clothing, hats, or sunglasses are not allowed.

Pagers and phones must be turned off. Recording equipment and cameras are not allowed in the courtroom.

Newspapers are not allowed in the courtroom. Dispose of all food items, including gum, prior to entering the courtroom.

Hearings will not be set unless a motion with fiat has been filed. Evidentiary pretrial motions may be carried until the time of trial.

Change of address must be filed by you in person at the County Clerk[']s Office or by notarized letter with a copy of your driver's license. You are responsible for knowing your court date. You will not receive any further written notice from the court or the clerk.

Collin County[']s Website: www.co.collin.tx.us

Mailed to:
FLORANCE,RICHARD JOHN JR

1908 VASSAR DRIVE
RICHARDSON, TX 75081
ntc3v2.doc

(Seal of COUNTY COURT AT LAW
COLLIN COUNTY, TEXAS)

THE STATE OF TEXAS
COUNTY OF COLLIN

I, Stacy Kemp, County Clerk, Court [sic] Collin County, Texas Do hereby certify that the foregoing instrument of writing is a full, true and correct copy of the instrument as filed for record in my office the *16* day of *MAY*, 20 *08*
No. *2-81238-06*

Witness my hand and official seal at my office in McKinney, Texas this *24* day of *JUNE*, 20 *08*

Stacey Kemp, Collin County Clerk
Collin County, Texas
By: */s/ (illegible)*, Deputy

2008 May 22—Transcript Excerpts

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 2-81238-06

THE STATE OF TEXAS	) IN THE COUNTY
	) COURT
vs.	) AT LAW NUMBER 3
	)
RICHARD JOHN FLORANCE, JR.	) OF COLLIN COUNTY,) TEXAS

COURT PROCEEDINGS

COPY

On the 22nd day of May, 2008, the following proceedings came on to be held in the above-entitled and numbered cause before the Honorable John O. Barry, Judge Presiding, held in McKinney, Collin County, Texas.

Proceedings reported by Computerized Stenotype Machine.

Laura B. Ballard, CSR, RPR
Official Court Reporter, County Court at Law No. 3
(972) 548-3834

(Proceedings begin.)

[N.B. There were no witnesses called or sworn.]
[N.B. The **highlighting in bold** shows the orders. The documents referred to are in the "Additional Essential Materials" section (Appendix A).]
[N.B. The *italics* are the essence of Florance's position.]

THE COURT: State of Texas versus Richard John Florance, Jr. Sir, that's your name, Richard John Florance, Jr.?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Florance, may I ask, do you read and write the English language?

THE DEFENDANT: Yes, sir.

THE COURT: You appear to ably understand the English language. Indeed, you appear to be an American.

THE DEFENDANT: Yes.

THE COURT: This lady here is the court coordinator, Donna Strub. If I'm not mistaken, you've had the occasion to see her earlier today about your pending case.

THE DEFENDANT: Uh-huh.

THE COURT: Can you please report to me what it was you reported to me a few moments ago? If you recall what it was, or even if you don't recall, if you'll just tell me again what happened this morning, Ms. Strub.

COURT COORDINATOR: I called Mr. Florance forward so that I could help with his case. I gave him the form that we use to have a choice --

THE COURT: Is this the form you're talking

[5]

about?

COURT COORDINATOR: Yes, it is.

THE COURT: The so-called form addressing the dangers and disadvantages of self-representation --

COURT COORDINATOR: That's the form.

THE COURT: -- as well as notice concerning financial inability to hire an attorney? That's the form you gave him?

COURT COORDINATOR: Yes, sir, I did.

THE COURT: Very well. Very well. Then what happened?

COURT COORDINATOR: Then I went over the three choices. One, he could hire an attorney; one, he could apply for a court-appointed attorney; third, he could represent himself and then he could speak to

the D.A. about his case. And he said he was not going to sign anything.

THE COURT: Well, very well. Well, Mr. Florance, until you do respond to this, you're not free to leave. So when you are free –

THE DEFENDANT: Well, I don't have a problem responding to it. I just don't want to sign anything.

THE COURT: Well, we require a response in writing, sir. We require it. In any event --

THE DEFENDANT: Okay.

THE COURT: – if you decline to respond in

[6]

writing, very well; you're just not free to go.

THE DEFENDANT: Okay. All right. Well, give me the paper.

THE COURT: Well, I'm going to hand it back to her and she's going to have the conference with you that she would ordinarily have. I'm going to ask that you return to your chair and she'll be with you when she's able to.

THE DEFENDANT: Okay.

THE COURT: Very good. Thank you.

(Proceedings in recess.)

[N.B. 30-45 minutes later] [26]

THE COURT: Well, with the form that you have there, please make your one responsive statement without changing the notices.

THE DEFENDANT: Right.

THE COURT: Correction; without changing the language at the bottom of the page.

THE DEFENDANT: Would you repeat the question for me?

THE COURT: Yes. Please make your responsive statement. You see the words there, defendant's statement?

THE DEFENDANT: Yes, sir; yes, sir.

THE COURT: There are three different choices.

THE DEFENDANT: Yes, sir.

THE COURT: Please make one choice and one [27]

choice only without changing any of the language that's on the form.

THE DEFENDANT: Oh, so just read the whole statement? Is that what you want me to do, or just say what I --

THE COURT: No, I wish for you to respond to

the notices by making a statement.

THE DEFENDANT: Okay.

THE COURT: And there are three different possibilities. The first being, the first statement that you could make being, I intend to hire an attorney. That's one.

THE DEFENDANT: Yes, sir.

THE COURT: And, of course, the two others follow immediately beneath.

THE DEFENDANT: Okay.

THE COURT: I ask that you make only one responsive statement without changing the wording.

THE DEFENDANT: So read the wording -- Your Honor, I don't want -- I don't think consent can be compelled. And I don't want to -- this is a document of consent. And I don't want to consent in the manner in which this is written. I don't have a problem with saying that I don't want an attorney, and that I'm not asking for the State to supply an attorney, and that I understand that

[28]

I would not be able to come back later and say, oh, I need to get an attorney and now your rulings are no good because I didn't have a right to counsel. I understand those issues.

And that's what I substantially tried to put into the notice, that statement that I gave you for your review. And I believe it substantially supplies what you're requesting in terms of what the Statute says at Article 1.051(f) and (g); (g) which says substantially in the following form, but not necessarily is required that it has to be this form.

THE COURT: I've already rejected the statement that you have drafted and signed.

THE DEFENDANT: Yes, sir. Can you tell me specifically what portions that you object to and I can perhaps modify them?

THE COURT: I decline to do so. I ask that you ask the court reporter to give to you what has been marked as, I think, Exhibit 1 or Court Exhibit 1. She'll hand it to you if you ask her for it. Please ask her for it.

THE DEFENDANT: Okay. Could you please hand me Exhibit 1, please?

COURT REPORTER: (Indicating.)

THE COURT: Now, please hand it to me.

[29]

THE DEFENDANT: Let the record show that the Judge has asked me to hand this to him. (Indicating.)

(Pause in proceedings.)

THE COURT: In just a moment I'm going to ask you to take it back.

THE DEFENDANT: Yes, sir.

THE COURT: I'm going to ask you to put it on top of the podium. And I require that you not change its content in any way.

THE DEFENDANT: Okay.

THE COURT: Please put it on top of the podium.

THE DEFENDANT: (Indicating.)

THE COURT: I'm holding up my copy. I've added pencil marks, a pair of quotation marks. I'm pointing to the first one right there. I'm sure you can see it.

THE DEFENDANT: Yes, sir.

THE COURT: And I'm pointing to the second one. It's at the end of the sentence.

THE DEFENDANT: Yes, sir.

THE COURT: Would you please read that sentence and understand it in the following way: The period is being moved so that it will now appear right after the word right; R-I-G-H-T.

[30]

THE DEFENDANT: Okay.

THE COURT: And everything in quotation marks is now omitted. It has no application. Irrelevant. Deleted.

THE DEFENDANT: Yes, sir.

THE COURT: Just take a moment to reread the sentence as I've asked you to.

THE DEFENDANT: I intend to be --

THE COURT: It would read as follows.

THE DEFENDANT: Oh.

THE COURT: I desire to waive that right. Period.

THE DEFENDANT: Oh, yes.

THE COURT: That's how the sentence would now read.

THE DEFENDANT: Oh, that sentence; yeah, good.

THE COURT: As rewritten -- rather, as edited --

THE DEFENDANT: Right.

THE COURT: -- does that make the existing sentence immune from your concern or your objection?

THE DEFENDANT: Yes, sir.

(Pause in proceedings.)

THE COURT: Now, would you please take it and [31]

hand it back to the court reporter?

THE DEFENDANT: (Indicating.)

(Pause in proceedings.)

THE COURT: It may be that the absence of that language renders your statement ineffectual.

THE DEFENDANT: Oh, the removal of the --

THE COURT: Yes, sir. It may be. This process is going to continue regardless of what you ask for. I give you notice of that because it is the prosecuting attorney that, by the filing of an accusation, provides the force or the pressure that makes this process operate. And I've received no notice from the prosecuting attorney otherwise.

So regardless of what you ask for, or whether you ask, this process is going to operate.

THE DEFENDANT: I received that notice. I understand where you stand.

THE COURT: Well, very well. Very well. The Legislature itself has provided for those words --

THE DEFENDANT: I understand.

THE COURT: – to be in the notice.

THE DEFENDANT: And I do believe it's that same section there that we were talking about earlier, 1.051(g). I believe that's correct.

THE COURT: I believe you're right. I

[32]

believe you're right. Well, do you decline to sign?

THE DEFENDANT: I'll sign.

THE COURT: Well, very well. Please do.

THE DEFENDANT: This is my -- this is the copy that I have --

THE COURT: Well --

THE DEFENDANT: -- that you gave me?

THE COURT: – what I've given you is the original court document and I've asked you not to modify it.

THE DEFENDANT: Oh, I apologize. I thought --

THE COURT: No, no. Have you changed it?

THE DEFENDANT: I put the quotes in like you did for the exhibit.

THE COURT: I see. Is that a pencil or pen that you have there?

THE DEFENDANT: That's a pen unfortunately. I'm sorry.

THE COURT: You might remember that I asked you not to change it.

THE DEFENDANT: Yes, sir. I thought that you had --

THE COURT: I know you did. You might remember that I asked you not to.

[33]

THE DEFENDANT: Yes, sir.

(Pause in proceedings.)

THE DEFENDANT: And when you asked me if I'm willing to sign it, I assumed you were talking about the document that's on the exhibit.

(Pause in proceedings.)

THE COURT: No, I'm talking about the one that you have in your possession.

THE DEFENDANT: Oh.

THE COURT: The one that you have control over and are able to place the tip of your pen on. That's the one I'm talking about.

THE DEFENDANT: Oh, I'm sorry, sir. I thought you were speaking of the one as we had went through the modification.

THE COURT: No, no. I'm going to give you another one.

THE DEFENDANT: Okay.

THE COURT: Please take it. This is the original now.

THE DEFENDANT: I won't write on it.

THE COURT: If it's your intention to sign responsively, please, without changing anything about the notice, please do so now.

THE DEFENDANT: If I do not wish to sign,

[34]

what -- is there any consequences?

THE COURT: Yes.

THE DEFENDANT: Could you tell me what those would be?

THE COURT: Yes. I will ask you to have a seat in the gallery --

THE DEFENDANT: And I can't leave.

THE COURT: – and you'll stay here until you do. We're open from 8:30 to 5:00, Monday through Friday.

THE DEFENDANT: Okay. As long as it's in the record that --

THE COURT: Oh, I assure you, sir, there's a record being made of everything that's happening right now.

THE DEFENDANT: Right. Yes, sir. Okay. (Indicating.) Do we have a case number?

THE COURT: I'll give you the number. 002-81238; I'll repeat it, 81238 --

THE DEFENDANT: Uh-huh.

THE COURT: -- 2006.

(Pause in proceedings.)

THE COURT: May I have it now, please?

THE DEFENDANT: (Indicating.) Yes, sir.

THE COURT: Now, it's not checked, so I'll hand it back to you.

THE DEFENDANT: Oh; oh, I apologize.

[35]

(Indicating.)

THE COURT: I'm going to read what appears to be your statement back to you.

I intend to be myself. I understand my right to have an attorney appointed to represent me free of charge if I am financially unable to hire one. I desire to waive that right and request that the Court proceed

with my case without an attorney being appointed for me. I hereby waive my right to legal representation.

Mr. Florance, is that your statement?

THE DEFENDANT: Um --

THE COURT: Please address me and not the court reporter.

THE DEFENDANT: Oh, okay. Could you say what was -- was the be in there or the represent?

THE COURT: I'll repeat the first sentence of what appears to be your statement. I intend to be myself.

THE DEFENDANT: Okay.

THE COURT: I give you notice that the word be is synonymous with the word represent.

THE DEFENDANT: It's not my intention.

THE COURT: I give you notice that the word be, as you're using it –

THE DEFENDANT: Yes, sir.

THE COURT: – means represent. I give you

[36]

notice of that. That's what the hearer of your words in the eyes of the law understands your word to mean. They're synonymous. I give you

notice of that.

THE DEFENDANT: I object to that meaning, but I understand and hear the notice.

THE COURT: Very well.

THE DEFENDANT: Um. So --

THE COURT: Objection overruled.

THE DEFENDANT: And that statement is signed in that fashion under duress; the fact that I can't leave if I don't sign the paper. So I did sign that document and make that check mark.

THE COURT: Very well. Do you have any questions to ask?

THE DEFENDANT: No, sir.

THE COURT: In just a moment when we finish, I'll ask that you have a seat back in the gallery. The coordinator will assist you and the assistant district attorney in preparing a scheduling order. Likely, the time for the trial will be 8:30 on Monday morning or 8:30 on a Wednesday morning. Please be in the courtroom at the appointed time on the given day. Please don't be late. You will leave here with your copy of the scheduling order.

THE DEFENDANT: Okay.

THE COURT: Thank you. Please return to your

[37]

chair. We're off the record now.

(Proceedings concluded.)

2008 May 22—Scheduling Order

CAUSE NO. *2 – 81338 – 06*

THE STATE OF TEXAS	)(	IN THE COUNTY COURT
VS.	)(	AT LAW NO. 3
Richard Florance	)(	COLLIN COUNTY, TEXAS

NOTICE TO APPEAR

THE ABOVE-REFERENCE CASE HAS BEEN SET FOR ONE OF THE FOLLOWING:

X JURY TRIAL

___ TRIAL BEFORE THE COURT

___ PLEA OF NOT TRUE

___ OTHER: _____

THE HEARING HAS BEEN SET FOR *July 16*, 200 *8* AT *8:30* A.M. IN THE COUNTY COURT AT LAW NO. 3.

Please be advised that you will receive no further notice of this setting.

COUNTY COURT AT LAW NO. 3

/s/ Donna Strub
Judge Presiding
by: court administrator

CERTIFICATE OF SERVICE

The undersigned has received a true and correct copy of the setting on the *22* day of *May*, 20*08*.

Interpreter required by ☐ DA – ☐ Defense

Language: _____

Defendant refuses to /s/*Jonathan Richardson*
Defendant — Assistant District Attorney

sign in open court, Defendant presented a copy of order /s/ *DS*
Defense Attorney — Court Administrator

White Copy – Court's File Canary – Dist. Atty File
Pink – Defendant. Atty Goldenrod – Defendant

(Seal of COUNTY COURT AT LAW
COLLIN COUNTY, TEXAS)

THE STATE OF TEXAS
COUNTY OF COLLIN

I, Stacy Kemp, County Clerk, Court [sic] Collin County, Texas Do hereby certify that the foregoing instrument of writing is a full, true and correct copy of the instrument as filed for record in my office the *22* day of *MAY*, 20*08*
No. *2-81238-06*

Witness my hand and official seal at my office in McKinney, Texas this *24* day of *JUNE*, 20 *08*

Stacey Kemp, Collin County Clerk
Collin County, Texas

By: */s/ (illegible)* _____, Deputy

2008 Jun 5—Post-*appeal* Notice to Appear

NOTICE TO APPEAR

Cause number
002-81238-06

In The County Court
at Law #3

The State of Texas Vs.
FLORANCE,RICHARD JOHN JR

of Collin County, Tx

Effective May 1, 2001, all defendants are required to be present in court for all settings.

You, the defendant, are hereby ordered to appear before The Honorable John O. Barry,County [sic] Court at Law #3, 1800 N. Graves, University Drive Courts, McKinney, Texas, 75069, on the 26 day of June A.D. 2008, at 1:15 o'clock P.M., to answer criminal charges pending in that Court, to wit:

Refuse Execute Release Fraudulent Lien/Claim

and there remain until discharged by that Court.

Witness my official signature at McKinney, Texas this 5 day of June A.D. 2008.

STACEY KEMP, County Clerk
Collin County, Texas

By: _____
Deputy Clerk

It is a criminal offense to fail to appear in Court upon receipt of this notice or **to influence or coerce a witness to elude legal process, or to harm or to threaten to harm a prospective witness, or to prevent or delay anyone[']s service as a**

witness. [emphasis added]

[Spanish omitted]

You have the right to be represented by an attorney or represent yourself.

You may not reschedule a case by phone.

Come to court dressed appropriately. Shorts, revealing clothing, hats, or sunglasses are not allowed.

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Hearings will not be set unless a motion with fiat has been filed. Evidentiary pretrial motions may be carried until the time of trial.

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Collin County[']s Website: www.co.collin.tx.us

Mailed to:
FLORANCE,RICHARD JOHN JR
1908 VASSAR DRIVE

RICHARDSON, TX 75081
ntc3v2.doc

(Seal of COUNTY COURT AT LAW
COLLIN COUNTY, TEXAS)

THE STATE OF TEXAS
COUNTY OF COLLIN

I, Stacy Kemp, County Clerk, Court [sic] Collin County, Texas Do hereby certify that the foregoing instrument of writing is a full, true and correct copy of the instrument as filed for record in my office the *5* day of *JUNE*, 20 *08*
No. *2-81238-06*

Witness my hand and official seal at my office in McKinney, Texas this *24* day of *JUNE*, 20 *08*

Stacey Kemp, Collin County Clerk
Collin County, Texas
By: */s/ (illegible)*, Deputy

Rule 14.1(i)(iii)—Any Rehearing

No rehearing sought or granted.

Rule 14.1(i)(iv)—Any Judgment of different date

None.

Rule 14.1(i)(v)—Statutes and Rules

The Statutes Challenged in this proceeding

Texas Civil Practices and Remedies Code

Sec. 51.014. APPEAL FROM INTERLOCUTORY ORDER.

(a) A person may appeal from an interlocutory order of a district court, county court at law, or county court that:

(1) appoints a receiver or trustee;

(2) overrules a motion to vacate an order that appoints a receiver or trustee;

(3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;

(4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary

injunction as provided by Chapter 65;

(5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;

(6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I, Section 8, of the Texas Constitution, or Chapter 73;

(7) grants or denies the special appearance of a defendant under Rule 120a, Texas Rules of Civil Procedure, except in a suit brought under the Family Code;

(8) grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001;

(9) denies all or part of the relief sought by a motion under Section 74.351(b), except that an appeal may not be taken from an order granting an extension under Section 74.351;

(10) grants relief sought by a motion under Section 74.351(l); or

(11) denies a motion to dismiss filed under Section 90.007.

(b) An interlocutory appeal under Subsection (a), other than an appeal under Subsection (a)(4), stays the commencement of a trial in the trial court pending resolution of the appeal. An interlocutory

appeal under Subsection (a)(3), (5), or (8) also stays all other proceedings in the trial court pending resolution of that appeal.

(c) A denial of a motion for summary judgment, special appearance, or plea to the jurisdiction described by Subsection (a)(5), (7), or (8) is not subject to the automatic stay under Subsection (b) unless the motion, special appearance, or plea to the jurisdiction is filed and requested for submission or hearing before the trial court not later than the later of:

(1) a date set by the trial court in a scheduling order entered under the Texas Rules of Civil Procedure; or

(2) the 180th day after the date the defendant files:

(A) the original answer;

(B) the first other responsive pleading to the plaintiff's petition; or

(C) if the plaintiff files an amended pleading that alleges a new cause of action against the defendant and the defendant is able to raise a defense to the new cause of action under Subsection (a)(5), (7), or (8), the responsive pleading that raises that defense.

(d) A district court, county court at law, or county court may issue a written order for interlocutory appeal in a civil action not otherwise appealable under this section if:

(1) the parties agree that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion;

(2) an immediate appeal from the order may materially advance the ultimate termination of the litigation; and

(3) the parties agree to the order.

(e) An appeal under Subsection (d) does not stay proceedings in the trial court unless the parties agree and the trial court, the court of appeals, or a judge of the court of appeals orders a stay of the proceedings.

(f) Repealed by Acts 2005, 79th Leg., Ch. 1051, Sec. 2, eff. June 18, 2005.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 3.10, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 915, Sec. 1, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 855, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1296, Sec. 1, eff. June 20, 1997; Acts 2001, 77th Leg., ch. 1389, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 204, Sec. 1.03, eff. Sept. 1, 2003.

Amended by:
Acts 2005, 79th Leg., Ch. 97, Sec. 5, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1051, Sec. 1, eff. June 18, 2005.
Acts 2005, 79th Leg., Ch. 1051, Sec. 2, eff. June 18, 2005.

Texas Rules of Appellate Procedure

Rule 25.2(a)(2)

(2) Of the Defendant. A defendant in a criminal case has the right of appeal under Code of Criminal Procedure article 44.02 and these rules. The trial court shall enter a certification of the defendant's right of appeal **each time it enters a judgment of guilt or other appealable order**.

(**emphasis added**).

Rule 25.2(d)

(d) ***Certification of Defendant's right of appeal.***

If the defendant is the appellant, the record must include the trial court's certification of the defendant's right to appeal under Rule 25.2(a)(2). **The certification should be part of the record when notice is filed**, but may be added by timely amendment or supplementation under this rule or Rule 34.5(c)(1) or Rule 37.1 or by order of the appellate court under Rule 34.5(c)(2). **The appeal must be dismissed if a certification that shows the defendant has the right of appeal has not been made part of the record under these rules.**

(**emphasis added**) (***emphasis in original***).

The Statutes Challenged in the underlying case

Texas Penal Code

Sec. 32.49. REFUSAL TO EXECUTE RELEASE OF FRAUDULENT LIEN OR CLAIM.

(a) A person commits an offense if, with intent to defraud or harm another, the person:

(1) owns, holds, or is the beneficiary of a purported lien or claim asserted against real or personal property or an interest in real or personal property that is fraudulent, as described by Section 51.901(c), Government Code; and

(2) not later than the 21st day after the date of receipt of actual or written notice sent by either certified or registered mail, return receipt requested, to the person's last known address, or by telephonic document transfer to the recipient's current telecopier number, requesting the execution of a release of the fraudulent lien or claim, refuses to execute the release on the request of:

(A) the obligor or debtor; or

(B) any person who owns any interest in the real or personal property described in the document or instrument that is the basis for the lien or claim.

(b) A person who fails to execute a release of the purported lien or claim within the period prescribed by Subsection (a)(2) is presumed to have had the intent to harm or defraud another.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 4, eff. May 21, 1997.

Texas Government Code

SUBCHAPTER J. CERTAIN FRAUDULENT RECORDS OR DOCUMENTS

Sec. 51.901. FRAUDULENT DOCUMENT OR INSTRUMENT.

(a) If a clerk of the supreme court, clerk of the court of criminal appeals, clerk of a court of appeals, district clerk, county clerk, district and county clerk, or municipal clerk has a reasonable basis to believe in good faith that a document or instrument previously filed or recorded or offered or submitted for filing or for filing and recording is fraudulent, the clerk shall:

(1) if the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court, provide written notice of the filing, recording, or submission for filing or for filing and recording to the stated or last known address of the person against whom the purported judgment, act, order, directive, or process is rendered; or

(2) if the document or instrument purports to create a lien or assert a claim on real or personal property or an interest in real or personal property, provide written notice of the filing, recording, or submission for filing or for filing and recording to the stated or last known address of the person named in

the document or instrument as the obligor or debtor and to any person named as owning any interest in the real or personal property described in the document or instrument.

(b) A clerk shall provide written notice under Subsection (a):

(1) not later than the *second business day after* the date that the document or instrument is offered or submitted for filing or for filing and recording; or

(2) if the document or instrument has been previously filed or recorded, not later than the *second business day after* the date that the clerk becomes aware that the document or instrument may be fraudulent.

(c) For purposes of this section, a document or instrument is presumed to be fraudulent if:

(1) the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of:

(A) a purported court or a purported judicial entity not expressly created or established under the constitution or the laws of this state or of the United States; or

(B) a purported judicial officer of a purported court or purported judicial entity described by Paragraph (A); or

(2) the document or instrument purports to create a lien or assert ***a claim against real or personal property or an interest in real or personal property*** **and**:

(A) is *not* a document or instrument *provided for* by the constitution or laws of this state or of the United States;

(B) is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person; or

(C) is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution or laws of this state or of the United States.

(d) If a county clerk believes in good faith that a document filed with the county clerk to create a lien is fraudulent, the clerk shall:

(1) request the assistance of the county or district attorney to determine whether the document is fraudulent before filing or recording the document;

(2) request that the prospective filer provide to the county clerk additional documentation supporting the existence of the lien, such as a contract or other document that contains the alleged debtor or obligor's signature; and

(3) forward any additional documentation received to the county or district attorney.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 14, eff. May 21, 1997. Amended by Acts 2005, 79th Leg., ch. 407, Sec. 1, eff. Sept. 1, 2005.
(all emphasis added)

Sec. 51.902. ACTION ON FRAUDULENT JUDGMENT LIEN.

(a) A person against whom a purported judgment was rendered who has reason to believe that a document previously filed or recorded or submitted for filing or for filing and recording is fraudulent may complete and file with the district clerk a motion, verified by affidavit by a completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, that contains, at a minimum, the information in the following suggested form:

MISC. DOCKET NO. _____

In Re: A Purported Judgment Lien Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

Motion for Judicial Review of a Documentation Purporting to Create a Judgment Lien

Now Comes (name) and files this motion requesting a judicial determination of the status of a court, judicial entity, or judicial officer purporting to have taken an action that is the basis of a judgment lien filed in the office of said clerk, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the person against whom the purported judgment was rendered.

II.

On (date), in the exercise of the county clerk's official duties as County Clerk of (county name) County, Texas, the county clerk received and filed or filed and recorded the documentation attached hereto and containing (number) pages. Said documentation purports to have been rendered on the basis of a judgment, act, order, directive, or process of a court, judicial entity, or judicial officer called therein "(name of purported court, judicial entity, or judicial officer)" against one (name of purported debtor).

III.

Movant alleges that the purported court, judicial entity, or judicial officer referred to in the attached documentation is one described in Section 51.901(c)(1), Government Code, as not legally created or established under the constitution or laws of this state or of the United States, and that the documentation should therefore not be accorded lien status.

IV.

Movant further attests that the assertions contained herein are true and correct.

PRAYER

Movant requests the court to review the attached documentation and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate.

Respectfully submitted,

_____

(Signature and typed name and address)

(b) The completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, must be as follows:

THE STATE OF TEXAS

AFFIDAVIT

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

"My name is _____. I am over 21 years of age, of sound mind, with personal knowledge of the following facts, and fully competent to testify.

I further attest that the assertions contained in the accompanying motion are true and correct." Further affiant sayeth not.

_____

SUBSCRIBED and SWORN TO before me, this _____ day of _____, _____.

_____

NOTARY PUBLIC, State of Texas

Notary's printed name:

_____

My commission expires:

_____

(c) A motion filed under this section may be ruled on by a ***district*** judge having jurisdiction over real property matters in the county where the subject documentation was filed. **The court's finding may be made solely on a review of the documentation attached to the movant's motion and without hearing any testimonial evidence.** [1] **The court's review may be made ex parte without delay or notice of any kind.** [2] **The court's ruling on the motion, in the nature of a finding of fact and a conclusion of law, is unappealable if it is substantially similar to the form suggested in Subsection (g).**

(d) The district clerk may not collect a filing fee for filing a motion under this section.

(e) After reviewing the documentation attached to a motion under this section, the district judge shall enter an appropriate finding of fact and conclusion of law, which must be filed and indexed in the same class of records in which the subject documentation or instrument was originally filed.

(f) The county clerk may not collect a filing fee for filing a district judge's finding of fact and conclusion of law under this section.

(g) A suggested form order appropriate to comply with this section is as follows:

---

[1] [N.B. *Cf.* TEX. R. CIV. P. 166a; FED. R. CIV. P. 56. RJF]

[2] [N.B. Even summary judgment requires Notice. RJF]

MISC. DOCKET NO. _____

In Re: A Purported Judgment Lien Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

Judicial Finding of Fact and Conclusion of Law Regarding a Documentation Purporting to Create a Judgment Lien

On the (number) day of (month), (year), in the above entitled and numbered cause, this court reviewed a motion verified by affidavit of (name) and the documentation attached thereto. No testimony was taken from any party, nor was there any notice of the court's review, the court having made the determination that a decision could be made solely on review of the documentation under the authority vested in the court under Subchapter J, Chapter 51, Government Code.

The court finds as follows (only an item checked and initialed is a valid court ruling):

_____ The documentation attached to the motion herein refers to a legally constituted court, judicial entity, or judicial officer created by or established under the constitution or laws of this state or of the United States. This judicial finding and conclusion of law does not constitute a finding as to any underlying claims of the parties.

_____ The documentation attached to the motion herein DOES NOT refer to a legally constituted court, judicial entity, or judicial officer created by or established under the constitution or laws of this state or of the United States. There is no valid judgment lien created by the documentation.

This court makes no finding as to any underlying claims of the parties involved and expressly limits its finding of fact and conclusion of law to a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation was originally filed, and the court directs the county clerk to index it using the same names that were used in indexing the subject document.

SIGNED ON THIS THE _____ DAY OF _____.

_____
DISTRICT JUDGE
_____ JUDICIAL DISTRICT
_____ COUNTY, TEXAS

Added by Acts 1997, 75th Leg., ch. 189, Sec. 14, eff. May 21, 1997.
(all emphasis added)

Sec. 51.903. ACTION ON FRAUDULENT LIEN ON PROPERTY.

(a) A person who is the purported debtor or obligor or who owns real or personal property or an interest in real or personal property and who has reason to believe that the document purporting to create a lien or a claim against the real or personal property or an interest in the real or personal property previously filed or submitted for filing and recording is fraudulent may complete and file with the ***district*** clerk a motion, verified by affidavit by a completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, that contains, at a minimum, the information in the following suggested form:

MISC. DOCKET NO. _____

In Re: A Purported Lien or Claim Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

Motion for Judicial Review of Documentation or Instrument Purporting to Create a Lien or Claim

Now Comes (name) and files this motion requesting a judicial determination of the status of documentation or an instrument purporting to create

an interest in real or personal property or a lien or claim on real or personal property or an interest in real or personal property filed in the office of the Clerk of (county name) County, Texas, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the purported obligor or debtor or person who owns the real or personal property or the interest in real or personal property described in the documentation or instrument.

II.

On (date), in the exercise of the county clerk's official duties as County Clerk of (county name) County, Texas, the county clerk received and filed and recorded the documentation or instrument attached hereto and containing (number) pages. Said documentation or instrument purports to have created a lien on real or personal property or an interest in real or personal property against one (name of purported debtor).

III.

Movant alleges that the documentation or instrument attached hereto is fraudulent, as defined by Section 51.901(c)(2), Government Code, and that the documentation or instrument should therefore not be accorded lien status.

IV.

Movant attests that assertions herein are true and correct.

V.

Movant does not request the court to make a

finding as to any underlying claim of the parties involved and acknowledges that this motion does not seek to invalidate a legitimate lien. Movant further acknowledges that movant may be subject to sanctions, as provided by Chapter 10, Civil Practice and Remedies Code, if this motion is determined to be frivolous.

PRAYER

Movant requests the court to review the attached documentation or instrument and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate.

Respectfully submitted,

_____

(Signature and typed name and address)

(b) The completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, must be as follows:

THE STATE OF TEXAS

AFFIDAVIT

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

"My name is _____. I am over 21 years of age, of sound mind, with personal knowledge of the following facts, and fully competent to testify.

I further attest that the assertions contained in the accompanying motion are true and correct." Further affiant sayeth not.

_____

SUBSCRIBED and SWORN TO before me, this _____ day of _____, _____.

_____

NOTARY PUBLIC, State of Texas
Notary's printed name:

_____

My commission expires:

_____

(c) A motion under this section may be ruled on by a district judge having jurisdiction over real property matters in the county where the subject document was filed. **The court's finding may be made solely on a review of the documentation or instrument attached to the motion and without hearing any testimonial evidence.** [3] **The court's review may be made ex parte without delay or notice of any kind.** [4] An appellate court shall expedite review of a court's finding under this section.

(d) The district clerk may not collect a filing fee for filing a motion under this section.

(e) After reviewing the documentation or instrument attached to a motion under this section, the district

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[3] [N.B. *Cf.* TEX. R. CIV. P. 166a; FED. R. CIV. P. 56. RJF]

[4] [N.B. Even summary judgment requires Notice. RJF]

judge shall enter an appropriate finding of fact and conclusion of law, which must be filed and indexed in the same class of records in which the subject documentation or instrument was originally filed. A copy of the finding of fact and conclusion of law shall be sent, by first class mail, to the movant and to the person who filed the fraudulent lien or claim at the last known address of each person within seven days of the date that the finding of fact and conclusion of law is issued by the judge.

(f) The county clerk may not collect a fee for filing a district judge's finding of fact and conclusion of law under this section.

(g) A suggested form order appropriate to comply with this section is as follows:

MISC. DOCKET NO. _____

In Re: A Purported Lien or Claim Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

Judicial Finding of Fact and Conclusion of Law
Regarding a Documentation or Instrument
Purporting to Create a Lien or Claim

On the (number) day of (month), (year), in the above entitled and numbered cause, this court reviewed a motion, verified by affidavit, of (name) and the documentation or instrument attached

thereto. No testimony was taken from any party, nor was there any notice of the court's review, the court having made the determination that a decision could be made solely on review of the documentation or instrument under the authority vested in the court under Subchapter J, Chapter 51, Government Code.

The court finds as follows (only an item checked and initialed is a valid court ruling):

_____ The documentation or instrument attached to the motion herein *IS asserted against real or personal property or an interest in real or personal property* and:

(1) IS provided for by specific state or federal statutes or constitutional provisions;

(2) IS created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by consent of an agent, fiduciary, or other representative of that person; or

(3) IS an equitable, constructive, or other lien imposed by a court of competent jurisdiction created or established under the constitution or laws of this state or of the United States.

_____ The documentation or instrument attached to the motion herein:

(1) IS NOT provided for by specific state or federal statutes or constitutional provisions;

(2) IS NOT created by implied or express consent or agreement of the obligor, debtor, or the owner of the

real or personal property or an interest in the real or personal property, if required under the law of this state or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person;

(3) IS NOT an equitable, constructive, or other lien imposed by a court of competent jurisdiction created by or established under the constitution or laws of this state or the United States; ***or***

(4) IS NOT asserted against real or personal property or an interest in real or personal property. [5] There is no valid lien or claim created by this documentation or instrument.

This court makes no finding as to any underlying claims [6] of the parties involved, and expressly limits its finding of fact and conclusion of law to the review of a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation or instrument was originally filed, and the court directs the county clerk to index it using the same names that were used in indexing the subject documentation or instrument.

SIGNED ON THIS THE _____ DAY OF _____.

_____

DISTRICT JUDGE

---

[5] [N.B. So, what are we here for, then? *RJF*]

[6] [N.B. The ruling challenged in No. 07-171 ***does*** go ***directly*** to the merits of the lien/claim; here, without Notice, opportunity to be heard, etc. *RJF*]

_____ JUDICIAL DISTRICT
_____ COUNTY, TEXAS

Added by Acts 1997, 75th Leg., ch. 189, Sec. 14, eff. May 21, 1997.

(all emphasis added)

Rule 14.1(i)(vi)—Additional Essential Materials

2006 Jun 23—A pretrial information sheet

CASE#/002-81238-06 CJ4B171

✳ *Republic of Texas* ✳

********** *NR*

NAME/FLORANCE RICHARD JOHN JR

****

ADDR/ 1908 VASSAR DRIVE RICHARDSON TX
SEX/M RAC/W DOB/ 8/19/58
HT/508 WT/155 HAIR/BRO EYES/BRO
DL#/TX [Number in original is omitted here]
SSN/
ORIGINAL CHARGE/ Refuse Execute Release
Fraudulent Lien/Claim
WARRANT FOR/ CAPIAS,
BOND/ 500.00
ISSUED BY/ Lewis ON 3/27/04

2699 | *TCIC*
LTR

FILED
COUNTY COURT AT LAW
JUN 2 3 2006
BRENDA TAYLOR CLERK
COLLIN COUNTY, TEXAS
BY _____ DEPUTY

2008 May 16—RJF's Post-Mandate, Post-Remand Verified Special Appearance and Motion to Dismiss (case style, filestamp)

Cause No. 002-81238-06

STATE OF TEXAS,	§	In The
	§	
Plaintiff,	§	COUNTY COURT AT
v.	§	LAW NO. 2
	§	OF COLLIN COUNTY
RICHARD JOHN	§	
FLORANCE, JR.,	§	
	§	COLLIN COUNTY,
Defendant.	§	TEXAS

DEFENDANT'S POST-MANDATE, POST-REMAND VERIFIED SPECIAL APPEARANCE AND MOTION TO DISMISS

FILED
COUNTY COURTS AT LAW
2008 MAY 16 AM 8: 36

STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS
By: */s/ [initials ?]* Deputy

2008 May 16—RJF's Post-Mandate, Post-Remand Formal Notice of Declining to Plea (case style, filestamp)

Cause No. 002-81238-06

STATE OF TEXAS,	§	In The
	§	
Plaintiff,	§	COUNTY COURT AT
v.	§	LAW NO. 2
	§	OF COLLIN COUNTY
RICHARD JOHN	§	
FLORANCE, JR.,	§	
	§	COLLIN COUNTY,
Defendant.	§	TEXAS

DEFENDANT'S POST-MANDATE, POST-REMAND FORMAL NOTICE OF DECLINING TO PLEA

FILED
COUNTY COURTS AT LAW
2008 MAY 16 AM 8: 37

STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS
By: */s/ [initials ?]* Deputy

2008 May 22—RJF's (hand-)written waiver language

Notice of Defendant's Statement

I am competent to defend this case without an attorney.

I voluntarily and intelligently waive my right to counsel. Art. 1.051(f).

I am not indigent.

I reserve all my rights not specifically waived.

May 22, 2008

/s/ Richard John Florance Jr.
RICHARD JOHN FLORANCE, JR.

Received from defendant Richard John Florance, Jr. in open court on Thursday, May 22, 2008

/s/ John O. Barry *5.28.08*
John O. Barry
Judge Presiding

RECEIVED
MAY 22 2008
County Court at Law 3

2008 May 22—The transferee court's compelled waiver language—Exhibit 1 in the 22 May transcript

NOTICE CONCERNING DANGERS AND DISADVANTAGES OF SELF REPESENTATION
[sic] And
NOTICE CONCERNING FINANCIAL INABILITY TO HIRE AN ATTORNEY

To the defendant:

"You do not have to have an attorney. The Judge will not require that you hire one or that one be appointed to represent you. The Judge will permit you to give up the right to be represented by an attorney if you understand these notices."

"If you are charged with an offense, an attorney would help you evaluate the charge pending against you, the strengths and weaknesses of the evidence against you, any defenses you might have, your plea to the charge, whether you should assert your right to trial-by-jury, whether you should testify or remain silent, post-judgment processes, and the process for appeal. Your attorney would advance your position at all phases of this proceeding, and ensure that the State of Texas shouldered all required legal burdens. With no attorney, you will face extreme difficulty and danger when representing yourself. It is doubtful that you could represent yourself as effectively as an attorney could. The prosecuting attorney is a trained attorney with knowledge of the law that you lack."

"If you are charged with violating a condition of probation, an attorney would help you evaluate the

strength of the charge, your plea, and any defenses you might have, whether you should testify, the alternatives available to the judge, and the process for appeal. With no attorney, you will face extreme difficulty and danger, and it is doubtful that you could represent yourself as effectively as your attorney could. The prosecuting attorney is an attorney with knowledge of the law that you lack."

"If you are financially unable to hire an attorney, you have the right to have an attorney appointed to represent you free of charge. You may become required to reimburse the county for monies paid by the court to such an appointed attorney" - --

Judge Presiding
County Court at Law No. 3

Defendant's Statement

I understand and acknowledge receipt of these notices from the judge and make the following statement:

- ☐ I intend to hire an attorney.
- ☐ I ask that an attorney be appointed.
- ☐ I intend to ~~represent~~ ^ *be* myself. I understand my right to have attorney appointed to represent me free of charge if I am financially unable to hire one. I desire to waive that right ^ " and request that the Court proceed with my case without an attorney being appointed for me. ^ " I hereby waive my right to legal representation.

Print Defendant's Last Name

Print Defendant's First Name

Today's Date

Defendant's Signature

Case Number(s)

2008 May 28—Emergency Notice of Appeal—Collateral Order Doctrine

FILED
COUNTY COURT AT LAW

MAY 28 2008

STACEY KEMP—COUNTY CLERK
COLLIN COUNTY, TEXAS
By: /s/ [KM] Deputy

Cause No. 002-81238-06-2008

STATE OF TEXAS,	§	In The
Plaintiff,	§	COUNTY COURT AT
v.	§	LAW NO. 3 OF
RICHARD JOHN	§	COLLIN COUNTY
FLORANCE, JR.,	§	COLLIN COUNTY,
Defendant.	§	TEXAS

FLORANCE'S VERIFIED EMERGENCY NOTICE OF APPEAL UNDER THE COLLATERAL ORDER DOCTRINE

Affidavit of Richard John Florance, Jr.

STATE OF TEXAS	§	
COUNTY OF DALLAS	§	ss. KNOW ALL MEN BY THESE PRESENTS

Before me, the undersigned Notary, acting territorially to "this state", "UNITED STATES", and "UNITED NATIONS", personally appeared Richard John Florance, Jr., ("RJF") who satisfied me as to his

identity, and who, upon administration of oath or affirmation by me, declared and deposed as follows:

I am Richard John Florance, Jr.. [sic] I am at least 21 years of age, and I am competent to make this Affidavit. I have personal knowledge of these facts, and these facts are true and correct.

Assertion of Rights

I assert all my unalienable rights, privileges and immunities at Natural Law, Common Law and Maritime Law, and all my commercial rights relevant to a place called this state. Any waiver of rights will be specific, in writing, and of Record.

The fundamental, collateral order problem

The original trial judge recused himself last week, and now this matter is in a different court. Upon the arraignment scheduled for earlier today, when the court staff told me that the case was "starting all over, again", I got the distinct impression that they were telling me that this case now is being deprived of the Record developed over the past two years.

Thus, the current "order". effectively striking the entire Record up to and including even the documents I filed last week, which collateral issue "order" is being acted on as "final", given that trial is also now set for July, which is an impossibly short preparation time, is that the Record in this case has been destroyed or struck or otherwise rendered unavailable for this case, solely due to the fact that a different judge now presides over it.

Key, there seems to be no recognition of my

recently filed documents, including my formal declination to plea, and my motion to dismiss, which the new trial court has not set for hearing. Also, given the impossibly short pre-trial period, I'm also being overtly denied discovery, thus denied access to the court. Further, the scheduling order signed today is based on no plea.

Thus, I'm not consenting to anything about anything about this case, and the first thing that needs to be cleared up is the continuity of and content of the Record on which this rocket docket trial setting is being based. There is no "starting over", as in, deleting the Record, just because there's a change in trial judge. No, No. No.

Further, Affiant sayeth not.

/s/ Richard John Florance, Jr.
Richard John Florance, Jr., Affiant

Signed and sworn to before me on this the *28th* day of May, 2008, for which note my seal and signature.

/s/ Raphael O. Omwebu (seal)
Notary Public Signature

(If seal is not by stamp, or not legible)

Raphael O. Omwebu My Commission Expires:
Notary Public Printed Name
December 7, 2010

EMERGENCY Notice of Appeal—Collateral Order Doctrine

RJF appeals the "final", collateral order that apparently strikes the entirety of the Record in this case, about two years' worth of work, on the sole basis that there's a different judge to preside over the trial. There is no Notice of any motion to strike, or to seal, or to expunge, or anything regarding the Record. There is no hearing for such. It just happened. EMERGENCY Appeal from this final, collateral order is taken to the Court of Appeals, Fifth District of Texas at Dallas. The effective order appealed is viva voce, and the related information is of Record. RJF has contacted the court reporter, and today's transcript has been ordered.

Respectfully submitted,

/s/ *Richard John Florance, Jr.*
/s/ Richard John Florance, Jr.
Richard John Florance, Jr.

1908 Vassar Drive
Richardson, Texas 75081

2008 Jun 10—Verified Non-emergency Notice of Appeal—Collateral Order Doctrine

FILED
COUNTY COURTS AT LAW
2008 JUN 10 AM 11: 24

STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS
By: /s/ *[JM]* Deputy

Cause No. 002-81238-06-2008

STATE OF TEXAS,	§	In The
Plaintiff,	§	COUNTY COURT AT
v.	§	LAW NO. 3 OF
RICHARD JOHN	§	COLLIN COUNTY
FLORANCE, JR.,	§	COLLIN COUNTY,
Defendant.	§	TEXAS

FLORANCE'S VERIFIED NON-EMERGENCY NOTICE OF APPEAL UNDER THE COLLATERAL ORDER DOCTRINE

Affidavit of Richard John Florance, Jr.

STATE OF TEXAS	§	
COUNTY OF DALLAS	§	ss. KNOW ALL MEN BY THESE PRESENTS

Before me, the undersigned Notary, acting territorially to "this state", "UNITED STATES", and "UNITED NATIONS", personally appeared Richard

John Florance, Jr., ("RJF") who satisfied me as to his identity, and who, upon administration of oath or affirmation by me, declared and deposed as follows:

I am Richard John Florance, Jr.. [sic] I am at least 21 years of age, and I am competent to make this Affidavit. I have personal knowledge of these facts, and these facts are true and correct.

Assertion of Rights

I assert all my unalienable rights, privileges and immunities at Natural Law, Common Law and Maritime Law, and all my commercial rights relevant to a place called this state. Any waiver of rights will be specific, in writing, and of Record.

The next collateral order problem

The first problem, the emergency problem, has to do with the Record, and what is or isn't in the Record where a case is purportedly "starting all over again", where the past two years' of effort is apparently simply deleted when the one judge recuses and the case is effectively transferred to another court. That's the emergency collateral matter already underway as of Friday, 23 May 2008.

This one is not an emergency, but it is collateral, and it must be addressed at this stage, or it may become moot, no matter the outcome at trial.

I intend to conduct my own defense. As a result, the trial court, understandably, needs something in the Record that confirms my voluntarily and intelligent waiver of right to representation by an attorney.

The trial court proposed an exact repeat of the language found in Art. 1.051(g). I don't like that language. So, I rejected the offer and counter-offered with a statement that adequately provides what the court needs in the way of a statement in writing and of Record by which I have voluntarily and intelligently waived my right to representation by an attorney.

The court rejected the counter-offer and compelled me to agree to the language found in Art. 1.051(g). Therefore, I'm also appealing the collateral, final mandamus order by which I was compelled to consent to that waiver via the exact language of that statute.

Further, Affiant sayeth not.

/s/ Richard John Florance, Jr.
/s/ Richard John Florance, Jr.
Richard John Florance, Jr., Affiant

Signed and sworn to before me on this the *28th* day of May, 2008, for which note my seal and signature.

/s/ Raphael O. Omwebu (seal)
Notary Public Signature

(If seal is not by stamp, or not legible)

Raphael O. Omwebu My Commission Expires:
Notary Public Printed Name
December 7, 2010

NON-EMERGENCY Notice of Appeal—
Collateral Order Doctrine

RJF appeals the "final", collateral, mandamus order by which he was compelled to agree to the exact waiver language found in Art. 1.051(g). Appeal from this final, collateral, mandamus order is taken to the Court of Appeals, Fifth District of Texas at Dallas. The order appealed is viva voce, and the related information is of Record. RJF has contacted the court reporter, and the transcript has been ordered, as of Friday 23 May.

Respectfully submitted,

/s/ Richard John Florance Jr.
/s/ Richard John Florance, Jr.
Richard John Florance, Jr.

1908 Vassar Drive
Richardson, Texas 75081

2008 Jun 10—Second Verified Non-emergency Notice of Appeal—Collateral Order Doctrine

FILED
COUNTY COURTS AT LAW
2008 JUN 10 AM 11: 23

STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS
By: */s/ [JM]* Deputy

Cause No. 002-81238-06-2008

STATE OF TEXAS,	§	In The
Plaintiff,	§	COUNTY COURT AT
v.	§	LAW NO. 3 OF
RICHARD JOHN	§	COLLIN COUNTY
FLORANCE, JR.,	§	COLLIN COUNTY,
Defendant.	§	TEXAS

FLORANCE'S SECOND VERIFIED NON-EMERGENCY NOTICE OF APPEAL UNDER THE COLLATERAL ORDER DOCTRINE

Affidavit of Richard John Florance, Jr.

STATE OF TEXAS	§	
COUNTY OF DALLAS	§	ss. KNOW ALL MEN BY THESE PRESENTS

Before me, the undersigned Notary, acting territorially to "this state", "UNITED STATES", and "UNITED NATIONS", personally appeared Richard

John Florance, Jr., ("RJF") who satisfied me as to his identity, and who, upon administration of oath or affirmation by me, declared and deposed as follows:

I am Richard John Florance, Jr. I am at least 21 years of age, and I am competent to make this Affidavit. I have personal knowledge of these facts, and these facts are true and correct.

Assertion of Rights

I assert all my unalienable rights, privileges and immunities at Natural Law, Common Law and Maritime Law, and all my commercial rights relevant to a place called this state. Any waiver of rights will be specific, in writing, and of Record.

There's a third collateral order problem

The first problem, the emergency problem, has to do with the Record, and what is or isn't in the Record where a case is purportedly "starting all over again", where the past two years' of effort is apparently simply deleted when the one judge recuses and the case is effectively transferred to another court. That's the emergency collateral matter already underway as of Friday, 23 May 2008.

The second problem is not an emergency, but it is collateral, and it must be addressed at this stage, or it may become moot, no matter the outcome at trial. That has to do with whether the court may compel the specific language of a written waiver of right to representation by an attorney.

This third problem has to do with clarification of the appellate order, thus, the meaning of the

Scheduling Order. The original trial court order dismissing this case included also a granting of STATE's motion to amend the Information. Since the appellate court reversed that order, that also suggests that the amendment has also been reversed, taking us back to the original Information.

Problems arise with rocket docket systems. This is just one more. Which Information is active: the original or the amended?

Further, Affiant sayeth not.

/s/ Richard John Florance, Jr.
/s/ Richard John Florance, Jr.
Richard John Florance, Jr., Affiant

Signed and sworn to before me on this the *28th* day of May, 2008, for which note my seal and signature.

/s/ Raphael O. Omwebu (seal)
Notary Public Signature

(If seal is not by stamp, or not legible)

Raphael O. Omwebu My Commission Expires:
Notary Public Printed Name
December 7, 2010

NON-EMERGENCY Notice of Appeal—Collateral Order Doctrine

RJF appeals the "final", collateral order, here, the Scheduling Order, that leaves ambiguous which

Information, the original one or the amended one, on which this court purports to be proceeding to trial. Appeal from this final, collateral order is taken to the Court of Appeals, Fifth District of Texas at Dallas.

Respectfully submitted,

/s/ Richard John Florance, Jr.
/s/ Richard John Florance, Jr.
Richard John Florance, Jr.

1908 Vassar Drive
Richardson, Texas 75081

2008 Jun 9—Cover Letter, RJF's Petition for a Writ of Habeas Corpus

FILED
COUNTY COURTS AT LAW
2008 JUN 9 AM 9: 43

STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS
By: _/s/ *[JM]*___ Deputy

5 June 2008

RICHARD JOHN FLORANCE, JR.
1908 Vassar Drive
Richardson, TX, 75081

STACEY KEMP, Clerk Via FedEx
County Courts at Law of Collin County
1800 North Graves Street
McKinney, TX 75069

Re: STATE v. Florance, 002-81238-06-2008, 002-81238-2008
Habeas

Dear Ms. Kemp:

Enclosed are one original and two copies of the petition for a writ of habeas corpus. The original is for filing, and the two copies are for service.

Sincerely,

/s/ Richard John Florance Jr.
Richard John Florance, Jr.
I reserve all rights not
specifically waived

Encls.

2008 Jun 9—RJF's Petition for a Writ of Habeas Corpus (case style, filestamp) (24 June version)

[N.B. The case style is presented in halves for clarity.]

FILED
COUNTY COURTS AT LAW
2008 JUN 9 AM 9: 43

STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS
By: */s/ [JM]* Deputy

Cause No. _____

RICHARD JOHN FLORANCE, JR., Applicant,	§ § §
v.	§ §
COUNTY COURT AT LAW NO. 2 OF COLLIN COUNTY, and/or COUNTY COURT AT LAW NO. 3 OF COLLIN COUNTY, Custodian(s), Defendant(s).	§ § § § § §

§ In The
§
§ COUNTY COURT AT LAW
§
§ NO. _____
§
§ OF COLLIN COUNTY
§
§
§
§ COLLIN COUNTY, TEXAS

FLORANCE'S PRE-TRIAL APPLICATION FOR A WRIT OF HABEAS CORPUS

2008 Jun 9—RJF's Petition for a Writ of Habeas Corpus (case style, filestamp) (27 June version)

County Clerk directed to file in Cause No. 2-81238-06.

John O. Barry
Judge
6.24.08

FILED
COUNTY COURTS AT LAW
2008 JUN 9 AM 9: 43

STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS
By: */s/ [JM]* Deputy

Cause No. _____

RICHARD JOHN FLORANCE, JR.,	§
Applicant,	§
	§
v.	§
	§
COUNTY COURT AT LAW NO. 2	§
OF COLLIN COUNTY, and/or	§
COUNTY COURT AT LAW	§
NO. 3 OF COLLIN COUNTY,	§
Custodian(s),	§
Defendant(s).	§

§ In The
§
§ COUNTY COURT AT LAW
§
§ NO. _____
§
§ OF COLLIN COUNTY
§
§
§
§ COLLIN COUNTY, TEXAS

FLORANCE'S PRE-TRIAL APPLICATION FOR A WRIT OF HABEAS CORPUS

2008 Jul 1—RJF's Notice of Appeal, Habeas, Collateral Order Doctrine (case style)

PRESENTLY COMMANDEERED AS
Cause No. 002-81238-06

RICHARD JOHN FLORANCE, JR.,	§
Applicant,	§
	§
v.	§
	§
COUNTY COURT AT LAW NO. 2	§
OF COLLIN COUNTY, **and/or**	§
COUNTY COURT AT LAW	§
NO. 3 OF COLLIN COUNTY,	§
Custodian(s),	§
Defendant(s).	§

§ **PRESENTLY** In The
§
§ COUNTY COURT AT LAW
§
§ NO. 3
§
§ OF COLLIN COUNTY
§
§
§
§ COLLIN COUNTY, TEXAS

FLORANCE'S VERIFIED EMERGENCY NOTICE OF APPEAL UNDER THE COLLATERAL ORDER DOCTRINE

Appendix B—This case, Round 1

Appellate Court

2007 Aug 31—Judgment

REVERSE and REMAND; Opinion issued August 31, 2007

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-07-00088-CR

THE STATE OF TEXAS, Appellant
v.
RICHARD FLORANCE, Appellee

On Appeal from the County Court at Law No. 2
Collin County, Texas
Trial Court Cause No. 002-81238-06

OPINION

Before Chief Justice Thomas, and Justices Richter and Lagarde [1]
Opinion by Justice Lagarde

---

[1] The Honorable Sue Lagarde, Justice, Court of Appeals, Fifth District of Texas at Dallas, Retired, sitting by assignment.

This is an appeal by the State of the trial court's January 3, 2007 written order granting appellee Richard Florance's motion to dismiss the information in the case of *State of Texas v. Richard John Florance*. *See* TEX. CODE CRIM. PROC. ANN. art. 44.01(a)(1) (Vernon 2006). The issue we are asked to decide is whether the trial court erred in dismissing this case based on its conclusion the statute is unconstitutional as applied to appellee. [2] Because we conclude the trial court reversibly erred in its legal conclusion that the statute is unconstitutional as applied, we reverse and remand this case to the trial court to be reinstated on its docket and for further proceedings consistent with this opinion. [3]

---

[2] The trial court's written dismissal order states specifically, "The court concludes that Section 32.49 of the Penal Code as it applied to this case, coupled with its reference and tying to Section 51.901(c) of the Government Code is and are void for vagueness. The court further concludes this defendant in this case is being denied due process by the statute's shifting the burden of proof in a criminal case."

[3] In April 2007, this Court issued an opinion involving the same appellee in cause number 05-06-00992-CV styled *In re A PURPORTED LIEN OR CLAIM AGAINST Collin County Clerk Brenda Taylor*. Concluding the "purported lienholder" failed to preserve for appellate review his claim that government code provisions allowing ex parte review of an allegedly fraudulent lien violated his right to due process, where purported lienholder did not bring this claim to the attention of the trial court, this Court affirmed the trial court's "Judicial Findings of Fact and Conclusions of Law Regarding a Document Purporting to Create a Lien." The sections of the government code at issue in that case were sections 51.901 and 51.903. *See* TEX. GOV'T CODE ANN. §§ 51.901, 51.903 (Vernon 2005 & Supp. 2006).

Background

Appellee was required to pay a $129 fee for preparation of a clerk's record for an appeal in a civil suit on behalf of his daughter. Finally, being faced with dismissal of the appeal if he did not pay the fee, appellee paid the fee. Three days later, appellee filed his "First Notice of Lien" against Collin County Clerk Brenda Taylor in the amount of $129. Appellee was advised, in writing, by an attorney on behalf of Collin County, the purported lien was illegal. Demand was made that he release the lien within twenty-one days. When appellee did not release the lien within twenty-one days, as demanded, the State charged appellee by information with refusal to execute release of a fraudulent lien or claim, a class A misdemeanor. *See* TEX. PEN. CODE ANN. § 32.49 (Vernon 2003).

The record is replete with various pretrial motions filed by appellee. In short, appellee argued below, and continues to argue on appeal, that section 32.49 of the Texas Penal Code is unconstitutional because section 51.901(c) of the Texas Government Code, referenced in penal code section 32.49, improperly shifts the burden of proof from the State to the appellee, requiring appellee to prove his innocence. This, appellee contends, violates his due process. *See id.*; TEX. GOV'T CODE ANN. § 51.901(c) (Vernon 2005).

The trial court agreed with appellee. [4] After

---

[4] This is a reasonable deduction from the trial court's comment, "[The statute] creates a circumstance where the defendant is presumed guilty. The legislature's intent and

granting the State's motion to amend the [⊥ 3] information, the trial court entered a written order dismissing the amended information. This State's appeal ensued. *See* TEX. CODE CRIM. PROC. ANN. art. 44.01(a)(1).

On appeal, the State contends section 32.49 of the penal code is not unconstitutionally vague, nor does it impermissibly shift the burden of proof to a defendant. The State contends the statute clearly sets out what constitutes a fraudulent lien—one that is not authorized by state or federal law, consent of the parties, or a court with jurisdiction. The State further contends the permissive presumption is a rational one, does not bind the fact finder, and does not require rebuttal by the defendant; consequently, the permissive presumption does not violate a defendant's due process right by improperly shifting the State's burden of proof to the defendant.

Standard of Review

Resolution of the issue before us does not turn on an evaluation of the credibility and demeanor of a witness; therefore, the trial court was in no better position than are we to make the required determination. We, therefore, review the issue before us de novo. *State v. Moff*, 154 S.W.3d 599, 601 (Tex. Crim. App. 2004); *Goodrich v. State*, 156

---

scheme here. Mr. Fredericks, has [as?] voiced on their behalf, is that the person, once he's shown to have filed this piece of paper, in a case like this, that it is presumed to be fraudulent." Moreover, the trial court's written order specifically states, "The court finds the presumption of fraud language creates a trial, if allowed to go forward, in which the defendant would be required to prove himself innocent."

S.W.3d 141, 145 (Tex. App.—Dallas 2005, pet. ref'd).

The challenged section of the Texas Penal Code is set out below:

> § 32.49. Refusal to Execute Release of Fraudulent Lien or Claim
>
> (a) A person commits an offense if, with intent to defraud or harm another, the person:
>
> (1) owns, holds, or is the beneficiary of a purported lien or claim asserted against real or personal property or an interest in real or personal property that is fraudulent as described by Section 51.901(c), Government Code; and
>
> (2) not later than the 21st day after the date of receipt of actual or written notice sent by either certified or registered mail, return receipt requested, to the person's last known address, or by telephonic document transfer to the recipient's current telecopier number, requesting the execution of a release of the fraudulent lien or claim, [⊥ 4] refuses to execute the release on the request of
>
> (A) the obligor or debtor; or
>
> (B) any person who owns any interest in the real or personal property described in the document or instrument that is the basis for the lien or claim.
>
> (b) A person who fails to execute a release of the purported lien or claim within the period prescribed by Subsection (a)(2) is presumed to have had the intent to harm or defraud another.

(c) An offense under this section is a Class A misdemeanor.

The challenged section of the Texas Government Code, referenced in section 32.49 of the penal code is set out below:

§51.901. Fraudulent Document or Instrument [5]

(a) if a clerk of the supreme court, clerk of the court of criminal appeals, clerk of a court of appeals, district clerk, county clerk, district and county clerk, or municipal clerk has a reasonable basis to believe in good faith that a document or instrument previously filed or recorded or offered or submitted for filing or for filing and recording is fraudulent, the clerk shall:

(1) if the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court, provide written notice of the filing, recording, or submission for filing or for filing and recording to the stated or last known address of the person against whom the purported judgment, act, order, directive, or process is rendered; or

(2) if the document or instrument purports to create a lien or assert a claim on real or personal property or an interest in real or personal property, provide written notice of the filing, recording, or submission for filing or for filing and recording to the stated or last

---

[5] Even though one sub-section of (c) is referenced, we set out the entire section for purposes of context.

known address of the person named in the document or instrument as the obligor or debtor and to any person named as owning any interest in the real or personal property described in the document or instrument.

(b) A clerk shall provide written notice under Subsection (a):

(1) not later than the second business day after the date that the document or instrument is offered or submitted for filing or for filing [⊥ 5] and recording or

(2) if the document or instrument has been previously filed or recorded, not later than the second business day after the date that the clerk becomes aware that the document or instrument may be fraudulent.

(c) For purposes of this section, a document or instrument is presumed to be fraudulent if:

(1) the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of:

(A) a purported court or a purported judicial entity not expressly created or established under the constitution or the laws of this state or of the United States; or

(B) a purported judicial officer of a purported court or purported judicial entity described by Paragraph (A); or

(2) the document or instrument purports to create a lien or assert a claim against real or

personal property or an interest in real or personal property and:

(A) is not a document or instrument provided for by the constitution or laws of this state or of the United States;

(B) is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person; or

(C) is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution or laws of this state or of the United States.

(d) If a county clerk believes in good faith that a document filed with the county clerk to create a lien is fraudulent, the clerk shall:

(1) request the assistance of the county or district attorney to determine whether the document is fraudulent before filing or recording the document;

(2) request that the prospective filer provide to the county clerk additional documentation supporting the existence of the lien, such as a contract or other document that contains the

alleged debtor or obligor's signature; [6] and [⊥ 6]

(3) forward any additional documentation received to the county or district attorney.

TEX. GOV'T CODE ANN. § 51.901.

Applicable Law

When we are confronted with an attack upon the constitutionality of a statute, we presume the statute is valid and that the Legislature has not acted unreasonably or arbitrarily. *Ex parte Granviel*, 561 S.W.2d 503, 511 (Tex. Crim. App. 1978). The burden rests upon the individual who challenges the statute to establish its unconstitutionality. *Id.* In the absence of contrary evidence, we will presume the legislature acted in a constitutionally sound fashion. *Rodriguez v. State*, 93 S.W.3d 60, 69 (Tex. Crim. App. 2002). [7] If a statute does not substantially implicate

---

[6] [N.B. It's interesting that a clerk acting in good faith ***may*** demand proof of an underlying agreement in response to a document purporting to create a lien. *But cf. Florance v. comm'r*, T.C. Memos. 2005-60, -61 (which just happen to be the rulings that ignited DAVIS at the threshold); *Tello v. comm'r*, 410 F.3d 743 (5th Cir. 2005); *Stearman v. comm'r*, T.C. Memo 2005-39, 436 F.3d 533 (5th Cir. 2006). *RJF*]

[7] [n.6 in the original.] The reporter's record in this case consists of six volumes; volume 1 is entitled "Master Index." The Master Index, in turn, shows volume 2 to contain "(Special Appearance-Motion to Dismiss)," listing more specifically "Proceedings, Court's Ruling, Adjournment, and Reporter's Certificate," a second "volume 2" is entitled "Index of Exhibits," and lists "DX 1" as "Notice of Appearance;" volume 3 is entitled "Hearing in Motions" and specifically lists the following: "Statement by the Court, Statement by Mr. Florance, Statement by the Court, Statement by Mr. Florance, Statement

constitutionally protected conduct or speech, it is valid unless it is impermissibly vague in all applications. *State v. Holcombe,* 187 S.W.3d 496, 499 (Tex. Crim. App.) (citing *Village of Hoffman Estates v. Flipside, Hoffman Estates Inc.*, 455 U.S. 489, 495 (1982)), *cert. denied*, 127 S.Ct. 176 (2006).

Analysis

No contrary evidence appears in this record. Appellee did not meet his burden to show the statute was unconstitutional as applied to him. We presume, therefore, the legislature acted in a constitutionally sound fashion in passing the challenged, and presumptively constitutional, statute. The trial judge reversibly erred in presuming otherwise.

We reverse and remand this case for reinstatement of the information on the trial court's docket and for further proceedings consistent with this opinion. [⊥ 7]

---

by Mr. Fredericks, Discovery Request Discussed, and Reporter's Certificate;" a second "Volume 3" is entitled "Index of Exhibits" and lists "DX 1-80" described as "Documents attaches to Affidavit;" volume 4 is entitled "Motion to Quash" and specifically lists the following: "Statement by the Court, Statement In Mr. Fredericks, Statement by Mr. Florance, Court's Ruling-Motion to Amend, Court's Ruling-Motion to Quash, and Reporter's Certificate;" volume 5 is entitled "Index of Exhibits" and again specifically lists "DX 1" described as "Notice of Appearance" and "DX 1-80" described as "Documents Attached to Affidavit;" and volume 6 which is entitled "Index of Exhibits" and specifically lists "DX 81" described as "Book entitled 'Money' by James Ewart." An examination of the court reporter's record reveals no evidentiary hearing was held.

Void for Vagueness

The void-for-vagueness doctrine requires that a criminal statute define the offense with sufficient specificity that ordinary people can understand what actions are prohibited and in a manner that does not permit arbitrary and discriminatory enforcement. *Holcombe*, 187 S.W.3d at 499. A statute is not rendered vague merely because the words or terms are not specifically defined. *Ahearn v. State*, 588 S.W.2d 327, 338 (Tex. Crim. App. [Panel Op.] 1979). Words not defined are given their plain meaning, and the statute must be read in context and according to the rules of grammar and ordinary usage. *State v. Sandoval*, 842 S.W.2d 782, 787 (Tex. App.—Corpus Christi 1992, pet. ref'd) (citing TEX. GOV'T CODE ANN. § 311.011 (Vernon 1988)). Words defined in dictionaries and with meanings so well known as to be understood by a person of ordinary intelligence have been field not to be vague and indefinite. *Id.* (citing *Floyd v. State*, 575 S.W.2d 21, 23 (Tex. Crim. App. 1978)).

Analysis

Under section 32.49, the prohibited conduct is the owning, holding, or being a beneficiary of a fraudulent lien or claim *and* refusing to execute the release of such lien within twenty-one day's after receiving notice requesting a release of the lien or claim. TEX. PEN. CODE ANN. § 32.49(a). If one engages in the prohibited conduct "with intent to defraud or harm another...," that person commits a class A misdemeanor offense. *Id.* § 32.49(c). Section 51.901(c)(3) of the Texas Government Code, which is referenced in penal code section 32.49, defines

"fraudulent." TEX. GOV'T CODE ANN. § 51.901(c)(3).

We examine section 51.901(c) within the context in which it is found. Section 51.901(a) speaks not to the conduct of a person charged under section 32.49, but, rather, to the conduct of those persons named therein: "a clerk of the supreme court, clerk of the court of criminal appeals, [⊥ 8] clerk of a court of appeals, district clerk, county clerk, district and county clerk, or municipal clerk." Section 51.901(a) also imposes on those named individuals a reasonable good faith belief a document or instrument is fraudulent. Sub-section (a) then imposes a duty on the clerk to provide certain written notice to certain people. Section 51.901(b) imposes a duty on the clerk to provide such notice within a certain prescribed period of time.

Section 51.901(c), referenced in penal code section 32.49, is the sub-section challenged here. More specifically, it is the presumption in that section that appellee challenges. Sub-section (c) creates a permissive presumption that a document or instrument is fraudulent if the document or instrument is one meeting certain criteria. The purpose of this permissive presumption is to enable the clerk to fulfil [sic] his or her duty imposed under sub-sections (a) and (b) of section 51.901.

Section 51.901(d) then provides if the clerk, in reasonable good faith, believes a lien-creating document filed with his or her office is fraudulent, the clerk shall perform the acts described in (d)(1), (2) and (3).

We conclude section 51.901 is not void for

vagueness. It is specific in its terms. It does not substantially implicate constitutionally protected conduct or speech. The words used in the statute are words defined in dictionaries and have well-known meanings to persons of ordinary intelligence. When the words used in section 51.901 are given their ordinary meaning, the statute gives sufficiently definite notice to a clerk to enable him or her to perform the required clerical duties.

Moreover, section 51.901 imposes no duty upon, nor does it prohibit any conduct of, a defendant charged under 32.49 for *refusing to release a lien*, which, in a clerk's reasonable good faith, is presumptively fraudulent under section 51.901 of the Texas Government Code. And, it would seem to go without saying, that section 51.901 of the government code in no way shifts the State's burden of proof under section 32.49 of the penal code to prove beyond a reasonable doubt that a [1 9] defendant committed a criminal offense under that section by refusing to release such a lien.

Although section 51.901 appears to be the main focus of both appellee's and the trial court's attention, the trial judge's written order appears to conclude that both section 32.49 of the penal code and section 51.901 of the government code are unconstitutional as applied to appellee. The court's order states, in relevant part, "The court concludes that Section 32.49 of the Penal Code as it applied to this case, coupled with its reference and tying to Section 51.901(c) of the Government Code *is* and *are* void for vagueness." (emphasis supplied). Whether intentional or not, it is clear the trial court declared

section 32.49 of the Texas Penal Code unconstitutional as applied to appellee. Thus, we turn now to address the constitutionality of that section under which appellee was charged.

To the extent appellee complains about section 32.49's reference to section 51.901, we will not repeat our analysis of section 51.901 here, except to note that citation to another statute's definition of a particular term is not in itself unconstitutionally vague. *State v. Ford*, 179 S.W.3d 117, 123 (Tex. App.—San Antonio 2005. no pet.).

Instead, we focus on the presumption contained within section 32.49(b) about which appellee briefly complains in his brief. That section provides: "A person who fails to execute a release of the purported lien or claim within the period prescribed by Subsection (a)(2) is *presumed to have had the intent to harm or defraud another*." (Emphasis supplied). That presumption must be read in conjunction with section 2.05 of the penal code. *See* TEX. PEN. CODE ANN. § 2.05 (Vernon Supp. 2006).

A presumption is an evidentiary device and, in criminal law parlance, is said to be either mandatory or permissive. *Sandoval*, 842 S.W.2d at 788 (citing *Willis v. State*, 790 S.W.2d 307, 309 (Tex. Crim. App. 1990)). The distinction between a mandatory presumption and a permissive presumption is determined by the effect that each has upon the evidence. *Willis*, 790 S.W.2d at 309. [1 10] Mandatory presumptions are unconstitutional because they eliminate the State's burden of proving guilt beyond a reasonable doubt. *Id.* A permissive presumption allows, but does not require, the trier of

fact to infer the elemental fact or ultimate fact from the predicate evidentiary fact or facts. *Id.* at 310. Because it does not relieve the State's burden of proving guilt beyond a reasonable doubt, a permissive presumption is generally deemed constitutional if the reviewing court determines that a rational trier of fact could make the connection permitted by the presumption. *Id.*

The Texas Penal Code provides that presumptions in Texas are permissive. *Id.* Section 2.05 provides the consequences of a presumption created by the penal code. *See* TEX. PEN. CODE ANN. § 2.05. It also sets out specific jury instructions to be given if the issue is presented to a jury. *Id.* One of those jury instructions is "that the facts giving rise to the presumption must he proven beyond a reasonable doubt." *Id.* Another instruction is, "that if such facts are proven beyond a reasonable doubt the jury may find that the element of the offense sought to be presumed exists, but it is not bound to so find." *Id.* And, finally, it provides the State still "must prove beyond a reasonable doubt each of the other elements of the offense charged;" and "if the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the presumption fails and the jury shall not consider the presumption for any purpose." *Id.*

As long as section 2.05 is adequately incorporated into the court's charge, a presumption will be construed as permissive. *Sandoval*, 842 S.W.2d at 788 (citing *Willis*, 790 S.W.2d at 310). Thus, we conclude the presumption in section 32.49(b), in conjunction with a correct jury charge, is permissive—just as the *Sandoval* court did with

respect to section 38.12(b). *See Sandoval*, 842 S.W.2d at 788.

Reading section 32.49 in conjunction with section 2.05, as we must, we conclude the statute is neither void for vagueness nor does it shift the State's burden of proving appellee's guilt of the [⊥ 11] charged offense beyond a reasonable doubt. And because we conclude a rational trier of fact could make the connection permitted by the presumptions in sections 32.49(b) and 51.901(c), respectively, we conclude that both section 32.49 of the Texas Penal Code and section 51.901(c) of the Texas Government Code are constitutional as applied to appellee.

Accordingly, we reverse the trial court's order to the contrary and remand this case to the trial court for reinstatement of this cause on its docket and further proceedings consistent with this opinion.

/s/ Sue Lagarde
SUE LAGARDE
JUSTICE, ASSIGNED

Do Not Publish
TEX. R. APP. P. 47
070088F.U05

2007 Aug 31—Judgment

(Seal of THE STATE OF TEXAS)

Court of Appeals
Fifth District of Texas at Dallas

No. 05-07-00088-CR

STATE OF TEXAS, Appellant V. RICHARD FLORANCE, Appellee	Appeal from the County Court at Law No. 2 of Collin County, Texas. (Tr.Ct.No. 002-81238-06). Opinion delivered by Justice Lagarde. Chief Justice Thomas and Justice Richter also participating.

JUDGMENT

Based on the Court's opinion of this date, the judgment of the trial court is **REVERSED** and the cause **REMANDED** to the trial court for further proceedings consistent with this opinion.

Judgment entered August 31, 2007.

/s/ Sue Lagarde
SUE LAGARDE
JUSTICE, ASSIGNED

Trial Court

2007 Jan 3—Transferor Court's Order of Dismissal

2-81238-06
Cause No.

THE STATE OF TEXAS	IN THE COUNTY COURT
(Seal of)	AT LAW NO. 2 OF
vs.	COLLIN COUNTY,
(COLLIN COUNTY)	TEXAS
RICHARD FLORANCE	HON. JERRY LEWIS, PRESIDING

ORDER DISMISSING CASE

On the date signed below the court ruled on the defendant's motion to dismiss this criminal cause of action. The motion had been previously urged and argument was presented on September 15, 2006, and more specifically on November 16, 2006. The court took the matter under advisement. This date in response to the defendant's argument and the courts' questions in November, the state urged a motion to amend the information. That motion was granted. It is the Amended Information that is this date dismissed.

The court finds the language used by the legislature to create a criminal offense fails to meet the standards for prosecuting people in this state. Specifically, the applicable statute attempts to allow a defendant to be prosecuted for committing fraud, but does not adequately define what "fraud" means. The court finds the manners and means set forth in

the statute are vague, impossible of proof in a criminal context, and provide insufficient notice to any defendant regarding how they can defend themselves.

The court finds the statute results in a denial of due process in that it shifts the burden of proof to the defendant to prove there was either some law in Texas or the United States of America under which he is authorized to file the questioned lien or some facts showing the respondent under the lien expressly or impliedly consented to such lien. The court finds the presumption of fraud language creates a trial, if allowed to go forward, in which the defendant would be required to prove himself innocent.

The court concludes that Section 32.49 of the Penal Code as it applied to this case, coupled with its reference and tying to Section 51.901(c) of the Government Code is and are void for vagueness. The court further concludes this defendant in this case is being denied due process by the statute's shifting the burden of proof in a criminal case.

These problems are inherent in the penal statutes and cannot be cured by the prosecuting attorney at the county level. The defendant's motion to dismiss is

granted and the case is ordered dismissed.

A copy of this order shall be mailed to the state and to the defendant who represents himself.

Date signed: January 3, 2007

/s/ Jerry Lewis X
JERRY LEWIS

MAILED:

January 3, 2007 Lisa Podd
date *Court Coordinator*

Appendix C—The Related, Civil, Star Chamber case (Double Jeopardy?)

Appellate Court

2007 Apr 10—State appellate court Opinion

AFFIRM; Opinion filed April 10, 2007

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-06-00992-CV

IN RE A PURPORTED LIEN OR CLAIM AGAINST COLLIN COUNTY CLERK BRENDA TAYLOR

On Appeal from the 401st Judicial District Court Collin County, Texas
Trial Court Cause No. 401-2217-06

OPINION

Before Justices FitzGerald, Richter, Francis
Opinion By Justice FitzGerald

The trial court found Richard John Florance, Jr.'s "Florance's First Notice of Lien" fraudulent, as defined by section 51.901(c) of the government code, in its "Judicial Findings of Fact and Conclusions of

Law Regarding a Document Purporting to Create a Lien." Representing himself, Florance appeals that decision. We affirm the trial court's findings of fact and conclusions of law.

Brenda Taylor is the Collin County Clerk. On December 15, 2005, Florance filed "Florance's First Notice of Lien" in the Collin County records. It referred to cause number 001-1412-05 in County Court at Law No. 1, styled *Amanda Florance, a minor, and Richard John Florance. Jr., next friend v. State of Texas, a federal corporation*. In that case, Florance sought mandamus relief and a declaratory judgment challenging the Plano Municipal Court's jurisdiction [⊥ 2] over his daughter's class C misdemeanor citation for being a minor in possession of alcohol. *See In re A.F.*, a minor, No. 05-05-01435-CV, 2006 WL 1728035 (Tex. App.-Dallas June 13, 2006, orig. proceeding [mand. denied]), *cert. denied*, 127 S. Ct. 1 326 (2007). Florance sought to appeal the county court's decision in that case.

Florance states in his brief that he requested the Collin County Clerk to prepare the clerk's record. Florance initially refused to pay the $129 fee; however, he paid the fee on December 15, 2005, when faced with dismissal of his appeal for want of prosecution. [1] On December 15, 2005, as noted above, Florance filed "Florance's First Notice of Lien," purporting to create a lien for $129 against

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[1] *See* TEX. R. APP. P. 38.1f) ("In a civil case, the court will accept as true the facts stated unless another party contradicts them.")

[N.B. Apparently, the court's own Record doesn't suffice as adequate basis for contradiction. *RJF*]

Taylor on "all property and property interests whether found in or beyond this state, whether real, personal or intangible, in which you have any right, title or interest, as security for payment of this claim."

On December 22, 2005, Taylor's counsel sent Florance a certified letter, return receipt requested, putting Florance "on notice" that the filing of "Florance's First Notice of Lien" was "illegal" and referring to sections 51.901(c), 51.902, and 51.903 of the government code. In addition, counsel advised Florance that "it may also be a criminal offense to file a fraudulent Lien or Claim," referring to section 32.49 of the penal code. Counsel requested Florance to withdraw "Florance's First Notice of Lien" or, as provided by section 32.49, within twenty-one days of the receipt of the letter, execute a release of "Florance's First Notice of Lien." *See* TEX. PEN. CODE ANN. § 32.49(a)(2) (Vernon 2003). Counsel also stated that, absent the withdrawal or release, he would "seek all legal recourses available to the County Clerk . . .." The return receipt shows the December 22 letter was delivered on December 23, 2005, and that Amanda Florance signed for it. [⊥ 3]

On April 6, 2006, Florance filed "Florance's Withdrawal of Notice of Lien." Subsequently, pursuant to section 51.903, Taylor filed her "Motion for Judicial Review of Documentation or Instrument Purporting to Create a Lien or Claim" in the 401st Judicial District Court. After hearing the motion, the trial court signed its findings of fact and conclusions of law.

Six days after the hearing, Florance filed with the

district clerk "Florance's Verified Bill of Exceptions and Notice of Appeal." In this document, Florance states, "The First Notice that I received that this matter even existed is the 'final order.' I specifically assert my right to commercial Due Process."

Section 51.901 provides a procedure to determine whether a lien is fraudulent. Specifically, a document or instrument purporting to create a lien or assert a claim on real or personal property or an interest in real or personal property is presumed fraudulent if it:

> (A) is not a document or instrument provided for by the constitution or laws of this state or of the United States;
>
> (B) is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person; or
>
> (C) is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution of laws of this state or of the United States.

TEX. GOV'T CODE ANN. § 51.901(c)(2)(A)-(C) (Vernon Supp. 2006). If a county clerk believes in good faith that a document filed with the county clerk to create a lien is fraudulent, the clerk shall:

> (1) request the assistance of the county or district attorney to determine whether the

document is fraudulent before filing or recording the document;

(2) request that the prospective filer provide to the county clerk additional documentation supporting the existence of the lien, . . .; and

(3) forward any additional documentation received to the county or district [⊥ 4] attorney.

Id. § 51.901 (d).

Section 51.903 is titled "Action on Fraudulent Lien on Property." Section 51.903(a) provides a "suggested form" for a motion, verified by affidavit, that a person who believes that a purported lien is fraudulent may file with the district clerk. *Id.* § 51.903(a) (Vernon 2005). Section 51.903(c) provides that a motion under section 51.903 may be ruled on by a district judge having jurisdiction over real property matters in the county where the subject document was filed. *Id*, § 51.903(c). It also provides that "[t]he court's finding may be made solely on a review of the documentation or instrument attached to the motion and without hearing any testimonial evidence." *Id.* "The court's review may be made ex parte without delay or notice of any kind." *Id.* Section 51.903(e) provides that "the district judge shall enter an appropriate finding of fact and conclusion of law . . ." *Id.* § 51.903(e). Section 51.903(g) provides a suggested form order appropriate to comply with this section. *Id.* § 51.903(g). Here, the district Judge's findings of fact and conclusions of law track the statutory language, stating that the judge found that "Florance's First Notice of Lien" is fraudulent as defined by section 51.901(c); that it meets the requirements of section

51.901(c)(2)(A) through (C); and that "[t]here is no valid lien or claim created by 'Florance's First Notice of Lien."

In his sixth and eighth points, Florance argues that sections 51.901 and 51.903 violate due process because the presumption of fraud is "irrebuttable via no Notice or opportunity to be heard." Although not argued as a specific point, Florance states, "The first Florance knew of the matter was the receipt in the email [2] of the *ex.parte* judgment declaring something 'fraudulent.' " However, there is nothing in the record to show that Florance brought this complaint to the attention of the trial court. *See* TEX. R. APP. P. 33.1(a) (preservation of complaint requires making it to trial court by [⊥ 5] timely request, objection, or motion, and either ruling or refusal to rule by trial court). Florance filed his "Florance's Verified Bill of Exceptions and Notice of Appeal" with the district clerk. There is nothing in the record to show he brought it to the district judge's attention, thereby making the judge aware of his issue of notice under this chapter and giving the judge the opportunity to rule on it. *See In re Davidson*, 153 S.W.3d 490, 491 (Tex. App.—Amarillo 2004, orig. proceeding) ("Showing that a motion was filed with the court clerk does not constitute proof that the motion was brought to the trial court's attention or presented to the trial court with a request for a ruling."); *Metzger v. Sebek*, 892 S.W.2d 20, 49 (Tex. App.—Houston [1st Dist.] 1994, writ denied) (court not required to consider motion not called to its attention). Accordingly, Florance failed to preserve this

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[2] [N.B. "Mail", not "email". *RJF*]

argument for review.

We need not address Florance's first through fifth points, which offer irrelevant discussion regarding "maritime liens," "*in rem* matters," and the perfection of liens, without attacking the trial court's findings of fact and conclusions of law. *See Employers Cas. Co. v. Henager*, 852 S.W.2d 655, 658 (Tex. App.—Dallas 1993, writ denied) (unchallenged findings of fact are binding on parties and appellate court). [3] Florance's seventh point discusses section 51.902, which relates to a fraudulent judgment lien and is irrelevant to this case.

We affirm the trial court's "Judicial Findings of Fact and Conclusions of Law Regarding a Document Purporting to Create a Lien."

/s/ Kerry P. Fitzgerald
KERRY P. FITZGERALD
JUSTICE

060992F.P05

[3] [N.B. It's good law. Applying it, item (1) is an issue of law, thus self-preserving, *see also* Points 1-5, and item (4) is not only proposed by TAYLOR but also "not objected to" by her. *RJF*]

2007 Apr 10—State appellate court Judgment

(Seal of THE STATE OF TEXAS)

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN RE A PURPORTED LIEN OR CLAIM AGAINST COLLIN COUNTY CLERK BRENDA TAYLOR	Appeal from the 401st Judicial District Court of Collin County, Texas. (Tr.Ct.No. 401-2217-06). Opinion delivered by Justice FitzGerald, Justices Richter and Francis participating.
No. 05-06-00992-CV	

In accordance with this Court's opinion of this date, the trial court's July 13, 2006 Judicial Findings of Fact and Conclusions of Law Regarding a Document Purporting to Create a Lien is **AFFIRMED**.

It is **ORDERED** that Collin County Clerk Brenda Taylor recover her costs of this appeal from Richard John Florance, Jr.

Judgment entered April 10, 2007.

/s/ Kerry P. Fitzgerald
KERRY P. FITZGERALD
JUSTICE

Subsequent history

2007 Jun 22—State supreme court denied petition for review

(SEAL OF THE STATE OF TEXAS)
OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711-2248

RE: Case No. 07-0376 DATE: 6/22/2007
COA #: 05-06-00992-CV TC#: 401-02217-06
STYLE: RICHARD JOHN FLORANCE, JUNIOR
v. BRENDA TAYLOR

Today the Supreme Court of Texas denied the petition for review in the above-styled case.

MAIL TO: RICHARD JOHN FLORANCE JR.
1908 VASSAR DR
RICHARDSON, TX 75081

[Note: This Notice is in the form of a post card, for which the Pitney Bowes metering is as follows:
02 1A $ 00.26⁰
0004392386 JUN 22 2007
MAILED FROM ZIP CODE 78701]

2007 Oct 4—No. 07-171

Cert. denied regarding the original appeal.

2007 Nov 26—Rehearing, No. 07-171

Petition for rehearing denied.

Trial Court

2006 Jul 13—Trial Court's Findings and Conclusions

FILED
06 JUL 13 AM 8:58
HANNAH KUNKLE
DISTRICT CLERK
COLLIN COUNTY, TEXAS
By /s/ DEPUTY

FILED
COUNTY COURT AT LAW
2006 JUL 13 AM 10:33
_____ CLERK
COLLIN COUNTY, TEXAS
By /s/ Deputy [4]

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[4] [N.B. Filestamp of the conformed copy filed in the County Court. *See* No. 06-777. *RJ.*]

MISCELLANEOUS DOCKET NO.
401-02217-06

	§	IN THE DISTRICT
	§	COURT
IN RE: A PURPORTED	§	
LIEN OR CLAIM	§	*401st* JUDICIAL
AGAINST CLERK	§	DISTRICT
BRENDA TAYLOR	§	
	§	COLLIN COUNTY,
	§	TEXAS

JUDICIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A DOCUMENT PURPORTING TO CREATE A LIEN

On this the 13th day of July, 2006, in the above-entitled and numbered cause, this Court reviewed a motion, verified by affidavit, of Collin County Clerk Brenda Taylor and the documentation attached thereto, No testimony was taken from any party, nor was there any notice of the Court's review, the Court having made the determination that a decision could be made solely on review of the documentation or instrument under the authority vested the Court under Subchapter j, Chapter 51 TEXAS GOVERNMENT CODE.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED THAT after reviewing Collin County Clerk Brenda Taylor's MOTION FOR JUDICIAL REVIEW OF DOCUMENTATION OR INSTRUMENT PURPORTING TO CREATE A LIEN OR CLAIM and documentation, the Court hereby **FINDS** that the documentation ["FLORANCE'S FIRST NOTICE OF LIEN"] is fraudulent as defined by TEXAS GOVERNMENT CODE

§51.901(c) and:

(1) IS NOT provided for by specific State or Federal statutes or Constitutional provisions;

(2) IS NOT created by implied or express consent or agreement of the obligor, debtor or the owner of the real or personal property or an interest in the real or personal property, if required under the law of this State or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person;

(3) IS NOT an equitable, constructive, or other lien imposed by a court of competent jurisdiction created by or established under the Constitution or laws of this State or the United States;

(4) IS NOT [5] asserted against real or personal property or an interest in real or personal property. There is no valid lien or claim created by "FLORANCE'S FIRST NOTICE OF LIEN".

[5] [N.B. "IS NOT" tracks the *form*, exactly. West Virginia copied this exactly. Kansas fixed this part of it. *RJF*]

This Court makes no finding as to any underlying claims of the parties involved, and expressly limits its findings of fact and conclusions of law to the review of a ministerial act. The County clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation or instrument was originally filed, and the Court directs the County Clerk to index it using the same names that were used in indexing the subject documentation or instrument.

Signed this the _13_ day of _July_, 2006

/s/ Mark J. Rusch
DISTRICT COURT JUDGE